Year 1872 Term 2-2 1/3 Supreme -
Law on same subject
Revised -
Writ of Error

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 478.

CHY LUNG, PLAINTIFF IN ERROR,

vs.

J. H. FREEMAN, R. K. PIOTROWSKI, COMMISSIONER OF IMMIGRATION, AND WILLIAM McKIBBEN, SHERIFF OF THE CITY AND COUNTY OF SAN FRANCISCO, CAL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED JANUARY 8, 1875.

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1 Fourth district court.

IN THE MATTER OF THE APPLICATION of Chy Lung under a writ of habeas corpus. } 10114. August 26th, 1874.

Filed Sept. 4th, 1874.

GRANT I. TAGGART, *Clerk.*

2 In the district court of the 4th judicial district in and for the city and county of San Francisco, State of California. Hon. R. F. Morrison, J.

IN THE MATTER OF THE APPLICATION of Chy Lung under a writ of habeas corpus. } August 26th, 1874.

Counsel for petitioners, Quint & Bergan.
" " respondents, Estee, Ryan, & Bolt.

Testimony of John H. Freeman, called for respondents.

Sworn.

Mr. RYAN. Q. What is your name?

A. John H. Freeman.

Q. And business?

A. Master mariner, in command of the Japan.

Q. Had you on board of that vessel certain persons that are now before the court here?

A. Yes, sir.

3 Q. Be kind enough to tell the court any instruction you may have received in reference to them.

Mr. QUINT. I object to the question as irrelevant, immaterial, and inadmissable.

Mr. RYAN. Q. Did you ever have any conversation with the commissioner of emigration in reference to these people at any time? If so, state what occurred.

A. I received orders when I arrived here to keep the passengers on board until he had counted them.

Mr. QUINT. When they came to prove what the conversation was, that we object to in the ground that it is irrelevant, immaterial, & inadmissable; the instruction must be in writing, if there is any given.

The COURT. If there is any such provision, that it shall be in writing, I will sustain your objection; but I am not aware that there is any such provision.

Mr. RYAN. (After argument.) Where does this vessel ply; between what points?

A. Between San Francisco and Yokohoma & Hong-Kong.

4 Q. These persons that you speak of in court, from what point did you bring them?

A. From Hong-Hong, China.

Q. Did you receive from the commissioner of immigration, by writing or otherwise, any instructions in reference to these people?

A. Nothing but oral or verbal.

Q. What was that?

Mr. QUINT. I object. No oral instructions are admissable & they are not sufficient.

(Objection overruled; exception.)

Mr. BERGIN. We object to the verbal instructions on the grounds that instructions, if any, are irrelevant.

The COURT. It seems to me the proper question to ask is whether he had any permission from the commissioner of immigration to land these persons. That is the language of the statute.

Mr. RYAN. Did you or not, receive permission from the commissioner of immigration to land these persons?

A. All but those that we have in court.

Q. Why were they permitted to land.

A. I am not aware what the reason is. He interviewed them all, all of the 89; some he allowed them to go; but the ones before us he gave me orders to keep them on board. In coming up the dock he said there would probably in a few moments be a writ of habeas corpus issued to compel their release.

Q. You never received permission to land them?

No, sir. He was there on board when the ship arrived.

Q. No permission *is* regard to this?

A. No, sir.

The COURT. Do you know what country they are natives of?

A. China.

Cross-examination by Mr. Quint.

Q. How long have you been captain of that vessel.

A. About 6 years.

Q. Plying between three different ports?

A. Yes, sir.

Q. Do you know the American counsel at Hong-Kong?

A. I do, sir.

Q. I will ask you if at the time these passengers were received on board you obtained from him that certificate? (Showing.)

A. Yes, sir.

Q. Now, before you received them on board, you applied to the counsel for this certificate, did you?

A. Yes, sir.

Q. And these parties that are now in court are persons that are named in that certificate? Q. Under the authority of the American counsel at Hong-Kong, you did receive those persons as passengers on board the ship.

A. Yes, sir.

Q. And brought them here to San Francisco?

A. Yes, sir.

Mr. RYAN. I object. I would object to this except objections are of no use.

Mr. QUINT. This is considered in evidence. Then you say that this is the list of passengers that was certified to by the American counsel at Hong-Kong?

A. Yes, sir.

Q. And among that list are those that are now in court?

A. Yes, sir.

Q. And by virtue of this certificate you received them on board as passengers?

A. Yes, sir.

Q. And received the regular fare?

A. Yes, sir.

The COURT. And took them here to San Francisco.

Q. When did you land here?
A. On Monday the 24th.
Q. What time?
A. I arrived at the wharf about one o'clock.
Q. What time did the commissioner of immigration go aboard of your vessel?
A. A very few moments after that.
Q. Were you present at any interview between him and these passengers?
A. No, sir.
Q. Was he alone, or anybody with him?
A. I saw Mr. Vreeland with him.
Q. Anybody else?
A. No, sir.
8 Q. What did you see transpire between him and these passengers?
A. Nothing.
Q. Does the commissioner speak Chinese; or do you speak Chinese?
A. No, sir, I don't.
Q. You don't understand; neither did the commissioner, did he?
A. Not that I am aware of, sir.
Q. And you don't know anything about what examination he made with regard to the character or condition?
A. No, sir.
Q. All that you know is a verbal instruction which you received from him not to land these persons?
A. Yes, sir.
Q. Do you know whether there was any examination made before these instructions were given?
A. I don't sir. I left the ship a very few moments after we arrived, sir. I gave the necessary orders that he wished me to do before leaving.
Q. When were they taken from the ship?
A. On Tuesday morning.
Q. That was yesterday morning?
9 A. Yes, sir.
Q. How long were you on the trip?
A. About 30 days, sir.
Q. You observed the conduct and deportment of these women on board the ship?
A. Yes, sir.
Q. What was it?
A. Good.
Q. Was it not as good and as exemplary as any other of the passengers?
A. Yes, sir.
Q. You saw nothing indicating a lewd character on that voyage?
A. Nothing, sir.

Redirect examination by Mr. Ryan:

Q. Are you acquainted with the different classes of people of Hong-Kong, in China, and their characteristics?
A. No, sir; not much.
Q. Do you know what class of people these persons belong to there? Q. Have they no distinction marks?
A. Not that I know of.

The COURT. Who took those persons from the ship; do you know?
A. The sheriff, under a writ of habeas corpus.

10 *Testimony of Rudolph Norwin Piotrowski.*

Called and sworn.
Mr. RYAN. Q. What is your business?
A. Commissioner of immigration for the State of California, for this port.
Q. Did you give any instructions to the captain of the steamer Japan?
A. I met the captain and gave him instructions, verbally, not to land these persons present in the court; and a few moments afterwards I delivered in writing the instruction to Mr. Cobb, the director of the company.
Mr. BERGEN. Have you those instructions here?
A. No, sir; I have not the notification.
Mr. RYAN. Have you ever given any permission for these people to land at any time?
A. No, sir; I stopped them from landing.

Cross-examination by Mr. Quint:

Q. What is your nativity?
A. Polander.
11 Q. How long have you resided in San Francisco?
A. I am a pioneer here—since 1849.
Q. Been residing here ever since?
A. No, sir; I have been for 15 years in the mountains, and resided in San Francisco since 1864.
Q. What part of the mountains were you residing in prior to your residing in San Francisco?
A. In Sacramento Co. and others.
Q. When were you appointed commissioner of immigration?
A. As far as I recollect, the 5th of March a year ago.
Q. You went down when you heard this steamer was in and visited the steamer, did you?
A. Yes, sir.
Q. What was the first thing you did when you got there?
A. The first thing I did when I got there, I had my own interpreter sworn, because I did speak Chinese.
Q. Who was that?
A. He is in the court—Bargin.
12 Q. You had your interpreter sworn then?
A. Yes, sir.
Q. What was the next thing you did?
A. The next thing, I examined all of the women; I believe 56 or 57, and according to my judgment——
Q. Never mind about your judgment. I only ask you what you did?
A. I asked them questions.
Q. You examined 50 or 60 women?
A. Yes, sir.
Q. Then what did you next do?
A. I judged that these women which I have brought here in court——
Q. No, no; tell us what you did.
A. I asked them some questions.

Q. Through the interpreter?
A. Yes, sir.
Q. Then what next did you do after you had asked them questions?
A. When I was not satisfied, and supposed they were not proper women to be landed, & I told them to step away, & gave orders not to land them.
13 Q. You didn't think their answers were satisfactory?
A. Perfectly not satisfactory.
Q. Then you told these women to step aside?
A. Yes, sir.
Q. What next did you do?
A. Next, when I finished with them, I notified the agent of the company that they could not be landed, and gave *time* notice in writing for that purpose.
Q. How long a time did this examination last?
A. I believe 3 hours, or more.
Q. Was the examination taken down in writing?
A. Yes, sir.
Q. Did you take it down?
A. There are a great many; I believe we gave some items of the questions.
Q. Did you take down the examination of these questions in writing?
A. I was *as* assisted.
Q. Did you take down yourself the examination in writing?
A. I took a part, & the other part was taken by the assistant, Vreeland.
14 Q. Where is he?
A. Here.
Q. Have you got that here?
A. I suppose; yes.
Q. Have you got what you took here?
A. It was on the same paper. I haven't, but Mr. Vreeland has it.
Q. (Showing.) Look at this and tell us what part of this examination you took yourself. State first if this is the examination you refer to.
A. That is the examination, and it was all taken in my presence, without exception.
Q. As to the examination which was taken?
A. I can tell you. A part in my handwriting, and the balance is written by Mr. Vreeland.
Q. Tell us what part of that is in your handwriting, (showing). Take a pencil and mark what is in your handwriting; what you took down at that time; mark it with a cross.
(The witness marks.)
Q. You have marked on all that you recognize as your handwriting, with the cross, & of the examination. Is this all of the exami-
15 nation you made of these parties?
A. Yes, sir.
Q. And upon this examination you passed your judgement in regard to the character of the women, did you?
A. Yes, sir.
Q. Where is the written notification that you gave to the captain, or anybody else connected with this ship? Where is that?
A. That must be in the hands of the party that received it.
Q. Did you present the original?
A. Certainly.

Q. Where is the original?
A. We don't keep a copy of such things. I gave the original to Mr. Cox.
Q. Where is the copy?
A. I didn't keep any copy.
Q. What did you do with the copy?
A. I made none.
Q. You simply wrote out a notification?
A. Yes, sir.
Q. And that is all that you delivered?
A. Certainly.
Q. You didn't keep any duplicate of it?
16 A. Mr. Vreeland may have kept a copy; I don't know.
Q. Did you examine any other witnesses on that occasion except the parties themselves?
A. No, sir; there were no witnesses examined. I don't believe there can be any witnesses in such cases.
Q. Did you examine the captain?
A. No, sir; the captain was not there.
Q. Did you ask the captain for any papers by authority of which they were shipped here?
A. Yes, sir. I know these papers, for every ship that comes gives me such papers.
Q. Did he exhibit to you these papers at that time?
A. The next day afterwards; but I knew he had them.
Q. How many did you permit to land?
A. Except those 22, the others have been permitted to land.
Q. How many did you permit to land?
A. There were 89 in all, & 22 taken off leaves the balance.
Q. These 22 you didn't permit to land, and you refuse to per-
17 mit them upon their own simple statement?
A. Yes, sir.
Q. Who was your interpreter upon that occasion?
A. Bargin.
Q. You could not understand anything of the language?
A. Of course not.
Q. And you simply take the statement made through your interpreter?
A. I swore the interpreter first, & then took his statement.
Q. Did you ask the captain or any of the crew as to the character of the women?
A. No, sir, I did not.
Q. You never asked any body anything about the character of these women at all, nor inquired into them further than the statements they themselves made through that interpreter?

Redirect examination:

Mr. RYAN. Q. Be good enough to look at that paper (showing)
18 and see if you simply asked these people their names and ages.
A. I asked plenty of other questions.
Q. State to the court what you asked them.
A. The questions which I gave them were generally where they were married; if they had any relatives or companions when they came here; or why & by what means they came. All of them answered that they were married. I asked "Where is your husband?" In Cali-

fornia. When did he come? 3 years. How long have you been married? 4 years ago. How are you going to find him? We don't know. Have you any papers to show? They all said they were married; one of them said they were married in China; others say in California. I say, What proofs have you that your husbands sent for you? They had no letter; they say their husbands will come for them. I say, If he comes for you, you can go. I have no intention of stopping—(inaudible.) When I am commissioner of emigration I believe my
19 duty is to stop anything that is dangerous to the wel*fair* of the community, & of course I believe I do my duty. I did the best I could. I made a very careful examination. I am not a lawyer, and I did the best I could; made an examination of these people, &, according to my judgement, they were perfectly improper to come into this community.

Mr. RYAN. Q. Were, or were there not, on board of that vessel other women that you permitted to land?

A. Yes, sir.

Q. State their conduct.

A. There were 73 women there on board with th*e*re husbands & children who sent to me a special invitation to go and examine them, because they didn't wish to be examined with the others. I sent Mr. Vreeland, my deputy, & he went there and let them go, all of them; that gave me suspicions that these present women were not proper persons to be landed.

20 Mr. QUINT. That is the reason you refuse to permit them to land?

A. That is one of the principal reasons.

Mr. BERGIN. We are speaking of what you did.

Mr. QUINT. Q. Didn't the most of these women tell you they came here to meet their husbands?

A. Yes, sir; to look for their husbands.

Q. Told you so through the interpreter?

A. Yes, sir.

Q. Others came here with children?

A. Those were all permitted to go.

Q. Those that came here with children were permitted to go?

A. Yes, sir.

Q. But those that didn't have children, you concluded that they were improper persons to live here?

A. Yes, sir.

Q. That was the reason you refused to let these people land?

A. That is one of the reasons. There are a great many others.

Q. That is the misfortune that a great many women are afflicted with, is it?

A. That I don't know. I am not a doctor.

Q. That was the chief reason that prevented your allowing
21 them to land, was*en*'t it—that they came here by themselves and didn't have any children? They told you they had husbands here?

A. I could not believe their statements.

Q. Didn't some of them tell you they had come here to meet gentlemen that they were to marry?

A. Some of them said that.

Q. You didn't believe that?

A. No, sir. I said, if the gentleman comes ——

Q. They told you that?

A. Yes, sir.
Q. Through the interpreter?
A. Yes, sir. I told them also that they have to produce the men & then I will let them go.

Testimony of Capt. Freeman, recalled.

Mr. QUINT. State to the court the preliminary examinations which are made of emigrants, such as these that are now in court, before
22 they are permitted to land; & what was done in this instance before they were permitted to come on board the vessel as passengers, & what authorities examined them.
Mr. RYAN. I object; this is not the best evidence.
Mr. QUINT. It is something outside of the paper.
Q. I want to know what examinations was made, if any, of these persons before they were permitted to come on board of your ship as passengers, & by whom?
A. In Hong-Kong, the women were all obliged to go to the counsel's, and are there interviewed by him and his interpreters. He satisfies himself that they are respectable women, & he gives them a permit to buy a ticket. At that time he stamps them upon their arm; from there they are obliged to go to the harbor-master, and he satisfies himself on the same grounds & he stamps them, then they go the office and buy their ticket. The day the ship leaves Hong-Kong the harbor-master or one of his officers, & the counsel himself comes on board & sees that
23 the women whom he has given orders are the same as those that are on board; they are again interviewed, & the tickets, their ages, & everything is the same as he has taken down in his office, & the stamps are still upon there arm; therefore he passes them and allows them to leave the port.
Mr. QUINT. Q. Then, after all of these proceedings, you received them as passengers on board?
A. Yes, sir.
Q. Otherwise you receive none?
A. No, sir; not women. The men are all examined on board of the ship by the harbor-masters.
Q. And the women?
A. Have to go through the harbor-master & counsel first. They will not get their tickets before that.
Q. You know frequently of those that were excluded, don't you?
A. Quite a number, sir.
Q. On account of their being improper persons?
A. I cannot say why they are excluded?
Q. The reason you cannot say?
24 A. No, sir.
Q. They were not permitted to become passengers?
A. Yes, sir.
Q. Were any of these cabin-passengers?
A. No, sir.
Mr. RYAN. Q. You say there were none of them cabin-passengers?
A. No, sir.
Q. You spoke of their conduct on the voyage being exemplary. State in what particular or particulars your facilities for observing them.
A. I was among them a great deal, sir; I inspect their premises where they live, twice a day regularly & I am through there at least 4 times a day, night and day; when they are on deck they have a part of the ship

which is on my side, where my room-door is, & I pass & repass them, I suppose, 50 times a day.

Q. How many men did you have on board of this vessel coming that were directly in contact with these people?

A. Passengers; they didn't come in contact, only passing & repassing; these people have a separate side of the ship all to themselves, 500 of them.

25 Q. The women & men were then separate?

A. Yes, sir.

Q. Therefore if this inquiry were directed to the facts of ascertaining whether these were prostitutes or not, there was no opportunity, on that voyage, to determine that fact, as far as you know?

A. No, sir.

Q. By exemplary, you mean they conducted themselves properly at the time you observed them; were not boisterous, &c.?

A. Yes, sir.

Cross-examination of Capt. Freeman:

Mr. QUINT. Q. How many men did you have on board of your vessel?

A. Passengers, about 500.

Q. How many females?

A. 89.

Q. Now, you have been on board & have had a good deal of experience in sea-faring life. If a woman was particularly lewd &
26 with that number of males on board, do you think she would not exhibit some signs of it? Did you ever know of an instance where there was a woman that was really lewd that didn't show some signs of it?

(No answer.)

(Mr. Quint asks that during the examination all witnesses be excluded. After argument the motion is granted with the exception of Bargin & the commissioner of emigration and the appellants.)

Louis Lock called to act as interpreter.

Testimony of Lon Ying.

Called; sworn.

Mr. QUINT. Q. What is your age?

A. 20 years.

Q. Of what country are you a native?

A. She says she is a Lee Yup woman from China.

Q. Have you ever been in Cal.?

27 A. She says she has been here before.

Q. When did you first come to Cal.?

A. When she was 10 years old she came to Cal. first.

Q. When did you go back to China?

A. When she was 17 years old she went back.

Q. How long did you live in China after you returned?

A. About 3 years.

Q. Then is your return trip to California?

A. Yes, sir.

Q. Are you a married woman?

A. She is not.

Q. For what purpose did you return to California?

A. She came here to marry a husband. She is engaged to be married.

Q. And that was the purpose that you had in view on your return, was it?

A. Yes, that is what she came here for.

Mr. RYAN. Q. Where did you live when you were in California?

A. In this San Francisco, on Jackson street.

Q. Where is Jackson-street?

A. In S. F.; in this place.

28 Q. How far from here?

A. She said she didn't know; that she was living with her mother, & didn't go out in the street; & don't know how far it is from this court-house.

Q. Tell her to name some other streets in S. F.

A. She said she was with her mother, & she don't know the names of the streets.

Q. Ask her where this love of hers is that she came here to marry?

A. She says he is at a place called San *Tey*.

Q. Did he write to her to come here?

A. She says her mother told her to come here to Cal.

Q. Did she give her any directions where she was to find him?

A. She said that her mother was the one that found the husband for her. It was not with her own consent. In Chinese style the mother finds the husband.

Q. Where is the mother?

A. She says her mother is on Jackson st. First she said Gib-

29 son st., & then Jackson street.

Q. Ask her if that same woman is the mother of all these people?

A. Only her mother.

Q. How did her mother communicate to her the fact that she had a a husband for her?

A. She said that she had been here before, & that when she was young that this person was picked out for her as the husband; & that is the reason that she knew that it was her husband.

Q. And that was 3 years ago?

A. Yes, sir.

Q. Ask her, then, how she knew in the mean time that he was in San *Teg*?

A. Her mother told her.

Q. How did her mother tell her?

A. She wrote a letter to her.

Q. Ask her where that letter is.

A. At her adopted mother's the letter is.

Q. Can you read?

A. She can.

Q. Ask her who she knew in San Francisco the 17 years that she said she lived here.

30 A. She didn't say she lived 17 years here; she was 17 years old when she went back.

Q. Ask her how old she was when she came here.

A. She was 10 years old when she came here; when she went back she was 17.

Q. Ask her to name any person whom she knew during the 7 years that she lived here.

A. She said that she was not acquainted much; that she didn't go into the street while she was here.

Q. She didn't know anybody, then?
A. She was not acquainted; she didn't go out into the street. How should she be acquainted with persons?

Redirect examination:

Mr. QUINT. You came here with your mother before when you first came here?
A. Yes, sir.
Q. And lived with your mother until you were 17, and then you went back to China?
A. Yes, sir.
Q. And then after living in China 3 years you came back upon
31 a letter written by your mother, or some one for her?
A. Yes, sir.
Q. To marry a man who had been selected by your mother as your husband.
A. Yes, sir.

Cross-examination:

Mr. RYAN. What baggage did you have when you came here this time?
A. What she had on her person.
Q. Anything else; any other goods?
A. What she had on her person.
Q. Why is it, then, that she gave her mother this particular letter and that alone? Where did she see her mother since she landed this time?
A. She says she didn't have *no* chance to see her, because they arrested her.
Q. Then how did the mother get the letter which she says she gave to her mother? I understand her her mother has the letter which was written to China.
A. She says her adopted mother. She says that her adopted mother is in China, not here.
32 Q. And not having a very good recollection of the streets, *and* &c., did she have any written direction to find this man at San *Ta*?
A. She says that when she gets back here that her mother will find this man for her; she don't expect to find him herself.
Mr. QUINT. Ask her if her adopted mother in China wrote the letter to her.
A. She said that the letter was read to her, and told her to come back here and marry this husband.
Q. And she came back for that purpose?
A. Yes, sir.
Q. Ask her if she has any acquaintances, or relatives, or friends here.
A. She says she has an older sister here.
Q. Where is she?
A. Living with her mother.
Q. Is her mother living here?
A. She is here.
Mr. RYAN. Where does your mother live?
A. Jackson street.
Q. What is your mother's name?
A. Ah Yup.
Q. What is her sister's name?
33 A. Ah Yee.
Q. Where is the youngest sister?

A. She is this older sister.

Testimony of Ah Lin.

Called; sworn.

Mr. QUINT. Q. What is your age?

A. 19 years.

Q. Where were you born?

A. She says in China, at the San Yup district.

Q. Are you a married or single woman?

A. She has a husband.

Q. Where does your husband live?

A. In this, San Francisco.

Q. Did you come here to meet your husband?

A. She came here to find her husband.

Q. Have you ever lived here before?

A. No.

Q. Then you are a married woman, and came here to meet *to* your husband?

A. She came here to find her husband.

Cross-examination:

34 Mr. RYAN. How long has your husband been living here? Where in California does he live?

A. On Jackson street.

Q. What is his name?

A. Ah Kee.

Q. How long has he lived here?

A. She says he came the first month of this year, in Chinese. That would be in February that he came to this city.

Q. How did she come to come?

A. She says she was poor, and that she came here to meet or find her husband.

Q. Did he write for her?

A. She came of her own accord.

Q. Ask her how long she has been married to him.

A. She says on the last year, on the 8th month, that she married him.

Q. How does she know he lives on Jackson street?

A. She says friends had told her so.

Q. What friends—who were those friends?

A. She says friends had told her to find him; that if she went upon Jackson street she could find him by inquiring.

34 Q. Who were the friends that told her this?

A. She says one of those that said his name was Sam Sum. She don't know his name.

Q. Where does he live?

A. She says she don't know where he lived, and don't even know his name; that he said his name was Sam Sum.

Q. Ask her if she has seen him since she has been here.

A. She has seen him.

Q. Where?

A. He came down to the steamer.

Q. Has she seen him since?

A. She has not, since.

Q. When did he come down to the steamer?

A. She says that on the 14th of their month their steamer arrived here, and on that day she saw him.

Q. How is , then, that all the information she got about where her husband lived came from Sam Sum?

A. She says he is the on' that told her.

36 Q. She has never seen her husband since she was under arrest?

A. She has not seen him since the arrest.

Redirect examination:

Mr. QUINT. Where have you been kept since you were arrested?

A. In the prison-cell.

Q. You have had no opportunity to see anybody since you were arrested, have you?

A. No.

Q. Not even your husband?

A. She said they would not allow her to see even her husband.

Testimony of Di He.

Sworn.

Mr. QUINT. What is your age?

A. 17.

Q. Are you married or single?

A. Married.

Q. Where is your husband living?

A. In this San Francisco.

Q. How long have you been married?

A. Since last year.

Q. Did you ever live in San Francisco before?

37 A. Only come this time.

Q. Then you never lived here before?

A. No, sir.

Q. Did you come here to meet your husband?

A. She came to find the husband, but had not seen him?

Q. You have not been able to see him, have you?

A. She has seen his friends, but had not seen him.

Q. Where have you been since your arrival here?

A. She says she has lived in your prison. Where else should I live?

Q. Nobody has been permitted to see her since she was taken in custody?

A. She says where has there been any one to see us? That they wouldn't allow them to come in.

Cross-examination:

Mr. RYAN. Ask the witness what her husband's name is.

A. Ah Tuck.

Q. Where did she marry him?

A. In China she was married to him.

38 Q. How old is she?

A. 17.

Q. How old is her husband?

A. 20.

Q. When did he leave China?

A. She says that on the last year, the fourth month, she was married to him, and that on the 8th month he left China for here?

Q. Left China 4 mos. after he was married?

A. Yes, sir.

Q. When did she next here from her husband after she was married?

A. She says that on the first month of this year that a letter came back and told her to come here, and because that letter was sent she came here.

Q. Where is that letter?

A. She says that after she looked at the letter at home that it was burned.

Q. After she read it she burned it?

A. That is what she said.

Q. Why did she burn it?

A. She said after she had looked at the contents there was no use for her to keep it, and she burned it.

39 Q. Ask her if that letter contained the address of her husband, or if that told her where she was to find him.

A. She said that they told her to go to this Tok-wo street—that is, Washington alley; that she would find him by inquiring.

Q. Then she remembered it, from reading that letter, the name of that street ever since?

A. She says yes; that the letter said to inquire for him at the street called Tok-wo street and she would find him.

Q. Ask her if she read the letter herself.

A. Some one read it to her.

Q. Ask her if she can read at all.

A. She cannot read.

Q. Ask her to give her reason for destroying that letter.

A. She said she had looked at it and knew the contents. If she kept it would be no use, and so she burned it.

Q. Has she heard from her husband since she has been here?

40 A. She says that since she has come here she has not had a chance. She said you let her go and she will find him very quick. She says he has relations here, and through them she can find him.

Q. Who are the relations that he has here?

A. She says his older brother is here.

Q. What is his name?

A. Ah Qui.

Q. What does Ah Qui do?

A. She says he has a wash-house.

Q. What does her husband do?

A. The same thing—washing clothes.

Q. Why could she not find out by going and asking her husband instead of Ah Qui?

A. She says Ah Qui was at this tok or street, and the letter was written, and told her to go to the tok or street and inquire for Ah Qui, and that he would take her to the place where her husband lived.

41 *Testimony of Ah Fung.*

Called; sworn.

Mr. QUINT. Q. What is your age.

A. 19.

Q. Are you married or single woman?

A. Has a husband.

Q. How long have you been married?

A. Three years.

Q. Where and when were you married?

A. In China.

Q. Have you ever been in Cal. before?

A. No.
Q. When did you last see your husband?
A. She says that her husband is in China & not here.
Q. Ask her when she last saw her husband.
A. When she started for Cal.
Q. Then you left your husband in China & came to Cal.?
A. Yes, sir.
Q. Had you been living with your husband there in China?
A. Yes sir. She said her husband was a tailer in China, or a person that made clothes.
42 Q. You lived, then, with your husband in China prior to your coming to Cal.?
A. Yes, sir.
Q. Did you live with him there in China from the time you were married until the time you sailed for Cal.?
A. Yes, sir. She says she came with her older sister to Cal.

Cross-examination:

Mr. RYAN. Q. Who paid your passage?
A. Her oldest sister.
Q. Where is your older sister?
A. Right here.
Q. Point her out.
(The witness does so.)
Q. How much older is she than you?
A. Older than her one year.
Q. What did her oldest sister do in China?
A. She says that is the oldest one.
Q. What was her business in China, the oldest sister?
A. She said she didn't have anything to do in China.
Q. Who did she come here to meet or see?
43 A. She said that in China she hadn't much to do to support herself, and she came here to Cal. to try to get work at sewing.
Q. Ask her how much it cost to get here?
A. $40.
Q. Did anybody write her to come; what induced her to come here?
A. She said she wanted to come herself.
Q. Who paid the sister's passage, if she knows?
A. She said she had money of her own. She said, Don't you think that she had anything at all?
Q. Ask her where she got that money from; if she did no work, how did she have money?
A. She says they had been working before & had money, of course; she said my husband didn't dare to ask me so many questions; why should you ask me so many?
Q. Ask her now why is it she left her husband if he was such a specific man?
A. She says because in China it was hard to find work, & she
44 came here hoping to find something better; working at sewing.

Testimony of Ah Oy.

Called; sworn.

Mr. QUINT. Q. What is your age?
A. 19.
Q. Are you married or single?

A. Married.
Q. How long have you been married?
A. About 3 years.
Q. Where is your husband living?
A. In San Francisco.
Q. When & where were you married?
A. Near Macao.
Q. Did your husband come with you?
A. She came here herself to find the husband.
Q. Then you came here to meet your husband, did you?
A. Yes, sir.
Q. How long since you saw him?
A. Since last year. He came here last year.
Q. What is his name?
A. Ah Fook.

45 Cross-examination:

Mr. RYAN. Q. What is your husband's name?
A. Ah Fook.
Q. How did you expect to find him?
A. She says you let me out and try how long it will be before I can find him.
Q. Ask her where did he tell her that he lived?
A. She says that she was told, when she came here, that she would find a person that would *keep* her to find her husband; she says all I want is to get out, and I will find him very quick.
Q. Who told her that?
A. She says this brother came with her to Hong-Kong, & paid for or procured the passage on the steamer for her.
Q. The husband's brother?
A. She says her husband's brother came down with her to Hong-Kong, & procured the passage of the steamer for her.
Q. What did he tell her?
46 A. She said that he told her that when she got to San Francisco, by inquiry, there was a great many persons knew the husband, & she had only to speak the name and she could find him. She says she has no uneasiness but what she can find the man, if you give her a chance.
Q. Ask her if there is only one Ah Fook in China?
A. She says she cannot tell whether there are others of the same name or not, but she knows that her husband's name is Ah Fook; she can recognize him if she sees him.
Q. When her brother left her, did he give her that name on a piece of paper or not?
A. She says she knows her own husband's name. He didn't write any name on the paper.
Q. Did he write anything for her?
A. No; she says when she reached this city that there would be persons there waiting to take her to her husband.
47 Q. Ask her if that brother in China had ever lived here?
A. She said he came over at the same time with his brother, her husband, and that he went back this year to marry or to get his wife.
Q. Why is it, then, that he didn't tell her where her husband lived?
Q. She says if I should tell you the names of the place you could not find them by the streets, but when you reached the place, there will be persons here that will take you right to the husband.

Q. Ask her if this brother told her that she was simply to enquire when she came here of the first person she might meet where her husband was?

A. She says that she had friends here who were acquainted with her, and as soon as the steamer got here that they would recognize her and take her away.

Q. Tell her to name some of those friends?

A. She doesn't know there names, but they were cousins or friends of the husband of her.

48 Q. How did she expect to find them if she didn't know their names?

A. She says I had never been here before, & of course I would not know their names, but I knew my own husband's name. But they would come down & be waiting for me & I would enquire for the name of my husband & they would take me to my husband.

Q. How would she know they were the same people if she didn't know their names?

A. She knew some of the friends.

Q. Ask her why it is, if her husband left her, that her brother didn't tell her that husband would come down & meet her? What was the necessity of anybody else going to the steamer to meet her?

A. She says she didn't have a chance to find out whether the husband was coming or the friends. She had hardly got here before she was put into the cells of the prison, & she didn't have a chance to know.

49 Q. What business does her husband do?

A. She said he kept a sort of a dry-goods store. That is what they told her; she didn't know.

Q. Does he keep a dry-goods store with somebody else, or has he a partner?

A. She said she could not tell, of course, what he did after he came here.

Q. He kept a dry-goods store in China?

A. No, sir, here; sort of fancy articles.

Mr. RYAN, (to Mr. Quint.) If you will produce that man that keeps the fancy dry-goods store here, we will let her go.

Testimony of Dr. Otis Gibson.

Called; sworn.

Mr. RYAN. Q. What is your business?

A. I am a clergyman.

Q. Have you ever resided in China?

A. I have resided there 10 years.

Q. Do you know as to whether there are any distinctive marks
50 there by which a courtezan and prostitute can be recognized?

A. As a general thing where people——

(Mr. Quint object' to the question as irrelevant and immaterial.)

The COURT. You cannot tell until you hear the answer.

Mr. RYAN. State to the court.

A. The same general difference that there is between the character and dress of courtezans in this place. I would know courtezans in China as I would know the courtezans on Dupont st., & perhaps more definately on account of—these courtezans are in the habit of wearing a kind of flowered garments generally—not always, but generally. You will find silk; you will find silk yellow & figured, & things of that kind, which are not worn so much by the wives; the wives wear plain colors ex-

cept on gala days, when there is great dressing up for company. I presume on these women you will find—under these black outside cloaks—
you will find such garments.

51 Q. What are the usual colors of these garments?

A. Some of them are yellowish; yellowish silk with flowers on them; some are purple. I am not very good at colors. But the figured flowered garments are not generally worn by wives.

Q. Are there any other distinctive characteristics?

A. There is a certain class of prostitutes, boat-women, that wear handkerchiefs on their heads; the same women here do not always do it; the same class in every other respect do not always wear the handkerchiefs on their head; the general get-up and dress, from a shape & conduct is as different as it is with the courtezans in this country & very respectable ladies; that is the way we generally tell them.

Q. Do you see among this number of Chinese women any who bear those characteristics?

Mr. BERGIN. I submit that is not competent proof—a mere matter of opinion of the witness.

The COURT. (After argument.)

52 Q. What is the custom of the Chinese in China in relation to wives leaving there & going away from their husbands to different countries?

A. It is not the custom at all for the wives to go away without their husbands. Chinese gentlemen do not send their wives on any lengthy visits, not often, up & down the coast, without they go along with them.

The COURT. (After argument.) Objection sustained. It is a matter of opinion, I think.

Mr. RYAN. Q. Will you describe them to the court; what those distinguishing characteristics of the courtezans are again?

A. They are accustomed to wear flowered gaudy kind of clothing—clothing that is not worn by the respectable wives. There is no indelicacy in seeing or examining them; those women will show it if the' expose there arms; & you will find that under their outside clothing

53 in 9 out of 10 cases some of this variegarted silk or imitation of silk, some fancy cloths that has a bright color, probably yellow or pink or red, & some figures on it of some kind.

Q. Then, you say that in China women of the respectable class never travel alone?

A. No, sir. I think it would be almost never & leaving their husbands alone. It would be a very unusual thing.

Q. They are always accompanied?

A. By the husband or some male portion of the family.

The COURT. Is there anything about the hair that is peculiar, the manner of dressing it?

A. Yes, sir; the manner of dressing the hair is somewhat different, though I could not well explain it. They have manny modes of doing the hair in different places. The women on shore do their hair in one way & those in boats do their hair differently; & the courtezans on
shore & on boats would not do their hair alike. The flowers on

54 that girl at the end, & her whole get up indicate without a doubt; the others haven't got that on. It is not discoverable in all of them as I look at them to-day. In half of their cases there is evidence to my mind that they belong to that class from the clothing they have on. I don't know only by that, and I know by the fact of their comming as they do here.

Mr. BERGIN. I object to that testimony as not competent.

Cross-examination:

Mr. QUINT. Q. What is your age?

A. 47.

Q. Where were you born?

A. In New York.

Q. Where did you study for the ministry?

A. I graduated at Dickenson College, Carlisle, Penn.

Q. When did you go to China?

A. In 1855.

Q. You remained there for 10 years?

A. Got back in 1865, I call that 10 years.

55 Q. You were then in China from 1855 to '65?

A. Yes, sir.

Q. At what place *are* places did you reside there?

A. I resided at *Fuchou*.

Q. All of the time?

A. I was in Japan 3 months; I visited—of the ports of China—some of them twice, some of them once.

Q. What was your business while you were in China?

A. I was a missionary.

Q. Now, were you acquainted with any other persons in that capacity?

A. Yes, sir.

Q. Who were they?

A. Maltby, Dr. Wentworth, Baldwin—shall I tell the whole—I suppose 20 or 30.

Q. You were there about 10 years, you say; you came back here in '65, did you?

A. I came to the State of New York in 1865.

Q. When did you come to San Francisco?

A. 1867.

Q. You have been residing here since then?

A. Yes, sir.

56 Q. You have had charge of the mission up here on Clay street?

A. Never.

Q. On Washington street?

A. From its commencement.

Q. Do you claim to be an expert with regard to the peculiar characteristics which distinguish these different classes of people, or which control their actions?

A. I don't claim to be an expert in anything.

Q. Was you familiar with these who are prostitutes in China?

A. I have no familiarity with prostitutes in any country.

Q. The only familiarity that you have with them is simply only observation, which a citizen living in that place would naturally obtain?

A. Yes, sir.

Q. That is all the knowledge you have of them?

A. Yes, sir.

Q. That is all the knowledge you have of them here, is it not?

A. As much as any citizen.

57 Q. Have you any other knowledge than that which any citizen can obtain by general observation?

A. I have observation which citizens that don't move among the Chinese, & don't speak the Chinese language, would probably not have; my knowledge of the Chinese language, & my life being among them, make my oppertunities, I think, better than most citizens; perhaps not.

Q. I understood you to state that you could tell, ordinarily, a courtezan from a married women?

A. No, sir; I didn't say so.

Q. I understood that to be the import of your testimony. Can you, or not?

A. I didn't say so.

Q. Can you, or can you not?

A. I said I could easily distinguish a courtezan from a respectable lady.

Q. Then, that is what you mean?

A. Yes, sir.

58 Q. That you can easily distinguish a courtezan from a respectable lady?

A. Yes, sir.

Q. In walking along Kearney & Montgomery sts., suppose that you should meet half dozen ladies, or women, could you tell which were & which were not courtezans?

A. I might & might not.

Q. You might be mistaken in regard to it?

A. I think so; not very apt to be.

Q. Some of the most notorious courtezans walks the streets, don't they, in as modest apparel as the most virtuous wives?

A. I don't know; I have heard so.

Q. You have seen some wives that are dressed in as gaudy apparel as any courtezans in the community?

A. I don't understand that question.

Q. You have seen some wives in this community that have dressed in as gaudy apparel as the most notorious courtezans?

A. I could not say that I have.

Q. You do know that some wives do dress very gaudily, don't

59 you; in very costly apparel?

A. I suppose so; there is no doubt about that.

Q. And that is the case with a great many courtezan', is it?

A. I suppose so.

Q. Then the way that you distinguish or undertake to distinguish the courtezan from the grandest woman is their apparel?

A. Is that it? I stated that their apparel & their conduct & general style was so different that we could on general principles distinguish the Chinese courtezans as we could distinguish an American courtezan, & in many cases much more definitely.

Q. Do you know any Chinese married women here in this community?

A. A very few.

Q. Tell us any that you do know.

A. There is a man by the name of Tam Chaz with his wife here; brought her from China.

Q. Any others?

A. I saw in the Chronicle—I saw a man named . I asked

60 the man's name.

Q. Are those the only two?

A. I have married a number of parties myself here; some of them their names I don't remember, or where they are all of them. I know one of the parties is here. The man's name is Chin Ho. She was hooked out of the bay where she ran to escape from this very life, and is now married to a man connected with the Presbyterian mission. I don't remember his name.

Q. How many have you married?

A. I don't know, sir.

Q. You cannot tell how many you have married since you have been here?

A. I cannot tell now. I could by looking at my books here. I presume 6 or 8 couple, more or less.

Q. Will you tell me or the court what you see about the outward apparel of these woman, any of them, that is different from the ordinary dress of a Chinese woman who is married, or a virtuous Chinese
61 woman? Describe to the court the distinctive features, if any.

A. In the first place, the ornaments on the hair; in the second place, the clothing that I mentioned a while ago that I can see now on the arms of one or two.

Q. Which ones?

A. I see one at the end. (Pointing.) I see two at the end. They have on a black one outside, but just under that you will see the kind of cloth I was describing. I don't see any others but those.

(The counsel raises the sleeve of 3 or 4 of the women.)

A. Yes, sir; that is what distinguishes them from the virtuous female—that style. The same style you will find in all of the Chinese bawdry houses, when they stand at the door inviting company in.

Q. That ring is another feature, is it?

(Answer inaudible.)

Q. Are there any others there that you see anything about?

A. I don't see any others now, sir; I cannot see them.

Q. (Showing.) There is another color that is another indica-
62 tion of a prostitute, is it not?

A. I think so.

Q. (Showing.) That is another color & style, is that it?

A. Yes, sir; it is there. I presume they are all so.

The COURT. Have you been with the Chinese in this city much?

A. My business altogether is with them. I see a great deal of them. I don't see much of the women.

Q. Do you much of their domestic life?

A. There is very little domestic life here among the Chinese.

Q. What proportion of the Chinese women coming to this country are married? Could you say from you own knowledge of the Chinese here?

A. I don't suppose there are in this city to-day perhaps 100 married women. I don't think so, & those are 2nd wives for the most part. To the best of my knowledge there are not, to my knowledge. There may be that I don't know of, but I don't think think there are 20 first wives in this city.

63 Q. How many Chinese women are there in this city; do you know?

A. We call it in round numbers about 2,000.

Q. And you don't think more than one hundred of them are married.

A. I think not, unless you call it married where they have second wives. They, some of them, take this class of women for a second wife, & leave them with the family when they leave here, & somebody else take' them. There is a woman there that is the first wife?

Q. You swear to that?

A. To the best of my knowledge.

The COURT. What is the form of marriage in China?

A. An exchange of presents between the parties, taken by 3rd party, is made years before, often in childhood; & then papers are given &

passed at the time of the marriage; & they should always have papers. Where there is a real bona-fide marriage, they are very particular to have the 1st papers.

64 Q. Do they go through a religious form or ceremony?

A. They go through with a form what they call worshipping the heavens & the ancestral tablet. They bow so many times to the tablet & so many times to the heavens.

Q. Do they have a priest there?

A. Not usually they haven't there. The middle man is there. That is the kind of ceremony performed by the women.

Q. Is there any record made of it?

A. I think not, except these certificates are passed between the parties & a go-between or middle man assists in the transaction between 2 parties. Each party receives a paper. There is no marriage without a paper in China, as I understood it.

The COURT. Each party receives the paper?

A. As I understand it, yes, sir.

Mr. QUINT. You have taken a very active part in this case & all of these cases?

A. In this case I have taken no part at all except I came down
65 yesterday morning & happened to see this sort of riot in the corrider.

A. Were you not at the steamer when it arrived?

A. No, sir.

Q. Haven't you been there at all?

A. Not at this steamer.

Q. Haven't you seen and talked with the commissioner of e'migration?

A. I have seen him ten minutes or such a matter.

Q. Didn't you tell him what you wanted him to do about those China women?

A. No, sir; I didn't see him until after this transaction.

Q. Have you not an interpreter that acts for you in interpreting the Chinese language?

A. I try to speak it myself.

Q. That is not my question. Have you not got an interpreter that acts for you occasionally to interpret the Chinese language?

A. I don't use an interpreter now. I do my own talking. I have sometimes a little difficulty in it because from a slight difference
66 in *in* the dialects. I have 2 or 3 Chinamen who assist me in my missionary work.

Q. Do you know the person that interpreted for the commissioner of e'migration?

A. I understand it was Bargin. I know him.

Q. How long have you known him?

A. 3 or 4 years.

Q. Has he ever been employed there at the mission?

A. Yes, sir.

Q. He is employed there now *now*, isn't he?

A. Yes, sir; he is in my employ now.

Q. How long has he been employed there?

A. I don't remember the number of months.

Q. Didn't you send him down there to act as interpreter for the commissioner of immigration when this vessel arrived?

A. No, sir; I din't know he had gone until I got home. I was gone all day.

Q. Didn't you tell the commissioner of immigration that he could have him, or that he would go & interpret?

67 A. That was a long time ago since I told him.

Q. How long ago was it you told him that?

A. I don't remember. I should think it was some time last spring or winter.

Q. Didn't you know he was going down there to interpret on the arrival of this vessel?

A. No, sir; because for the last few steamers I told him he need not go. I didn't see anything to come of it, & I thought it took much of his time, & I told him he need not go. And then I told him there were to be 100 or 80 women to come on the steamer, & I told him if I had time I would go with him. But I didn't know anything had been done, or any thing about it until I came home. I had nothing to do with the case until now.

Testimony of Ira M. Condit.

Sworn; examined.

68 Mr. RYAN. Q. Have you ever resided in China?

A. Yes, sir.

Q. How long a period?

A. Nearly six years.

Q. Are you acquainted with the characteristics that distinguish the various castes or class of people there?

A. Yes, sir; somewhat.

Q. Will describe to the court what are the marked features that distinguish the courtezan from the balance of the population there?

A. As a general thing, those that are prostitutes are purchased. Do you mean that?

Q. As to the style of dress, &c.

A. They generally wear a gayer style of dress, a dress with yellow in it, & brighter colors. There is no definite dress which distinguishes them as such from the others more than that general feature of dress.

Q. As a rule, do married women in China, respectable women, dress in gaudy colors?

A. No, sir; not as a rule.

Q. Do courtezans, as a rule?

A. Yes, sir; they do.

69 Q. What are the colors they wear?

A. They wear a good deal of bright yellow in their dress That is the predominant color, I suppose.

Q. Are there any other features by which you can distinguish them?

A. It is more in their general character & appearance perhaps than anything else; just as it is in the same class in our own country.

The COURT. With respect to the costum of wives leaving their husbands and going abroad, what do you know about that? For instance, on a journey to America from China & leaving their husbands at home.

A. It is a thing that is very seldom done. I don't know as I know of any case of the kind.

Q. Husbands leaving their wives?

A. Husbands leave their wives in China & come to this country. That is very common.

Mr. RYAN. What is the custom in reference to women traveling in China? Are they usually accompanied by married persons or not, that is, the respectable classes?

70 A. The respectable classes of the Chinese women, they are in general accompanied by their husbands. No, sir; they are only accompanied by servants or by females friends, but it is against the cus- in China for a man to be seen in China with his wife on the street or in public places.

Q. But when they travel, or go on a journey for instance, as a rule, are the irrespectable women accompanied by men, or do they travel alone frequently?

A. No, sir; they don't travel alone. In China, of course, respectable women travel very little. They are occupied at home. They have their o'n private apartments, & they leave them but very little. There is not much traveling of women; very little. I have seen but very little of it.

Q. In the instances you have seen, how were they accompanied?

A. I don't know as I can say definitely.

71 Q. Then you cannot speak as to that fact of your own knowledge?

A. No, sir.

Cross-examination of Ira M. Condit:

Mr. QUINT. Q. Do you know the habits of the lower or middle class? You have been speaking of the higher-class Chinese, I suppose. Take the middle class; how is it with them with regard to their husbands & wives separating on coming to this country for instances, & leaving their wives at home & sending for them?

A. Men leave their wives at home & come to this country. That is very often practiced.

Q. Don't you know they have often sent, after coming to this country & remaining 3, 4, or 5 years, sent for their wives & have them come by themselves or with some friends?

A. No, sir; I don't know of any cases of that kind. There may be some cases; I presume there are some. But they are exceptional cases.

72 The COURT. How long have you lived in San Francisco?

A. Over 4 years.

Q. Do you know much about the Chinese here?

A. Yes, sir.

Q. Do you speak the Chinese?

A. Yes, sir.

Q. Do you know how many Chinese women there are in San Francisco?

A. It would be difficult to give a definite estimate. I have reckoned them to be between 3 & 4,000. It is very difficult to say.

Q. Do you know what proportion of them is married?

A. A very small proportion. I cannot say as to what proportion, but a very small proportion. Those men who have wives have second wives as a general thing; those whom they have married here, that they have married when they came from China here.

Here the court adjourns till 10 a. m.

73 AUGUST 27TH, 1874.

Testimony of Gaylos Woodruff.

Called for petitioner; sworn.

Mr. QUINT. Q. What is your business?

A. I am a police officer, & have been for the past 8 years in the city & country of San Francisco.

Q. What is the locality of your beat?

A. My beat commences on Jackson at Kearny & runs to Dupont; along Dupont to Washington & Jackson, & Washington alley, which is below Dupont, running from Washington to Jackson, & along Bartlett alley, running from Jackson to Pacific.

Q. What is the population that congregates about or chiefly inhabits that district?

A. I cannot give any correct estimate.

Q. What is the character of the population, Chinese or American?

A. Chinese altogether.

74 Q. And that is a sort of specialty of yours, isn't it, & for some 8 years?

A. Yes, sir.

Q. Can you state the population of married women in that district over which you preside—Chinese women?

A. No, sir, I cannot state exactly. I find in the county clerk's office, from May, 1872, up to date, 49 marriage licenses for Chinamen—Chinese females.

Q. How many persons do you know in that locality over which you are acting as a police officer that are living together? How many of the Chinese people that are living together are living together as husbands & wives?

A. (Referring to mem.) The house No. 642 Jackson st. has 8 families living in it; No. 635 has 4 families; 33 Washington alley has 6; 693 Jackson st. has 12 families—property *around* by Mr. Kent, who occupies one of the rooms.

Q. You mean by families husbands & wives living with their children?

75 A. I mean by that men who are living there with women, who claim them as their wives, and women who don't lead a life of prostitution. For instance, everybody that goes to that house after 11 o'clock at night has to have a night-key to get in. The building on the N. E. corner of Dupont st. has 3; the building on the S. E. corner of Jackson & Dupont has 10; 933 Dupont st. has one; 929 Dupont st. has 13; 915 Dupont st. has 3; 750 Washington st., the old Bee-hive building, has 20; 814 Washington st. has 10; the old California Hotel, on the corner of Commercial & Dupont st., has 5; 728 Dupont st., has 3; 720 Dupont st. has 3; 820 Dupont st. has 6. Total, 107 families.

Q. 107 married women that are living in the beat over which you preside?

A. No, sir; a portion of this is not on my beats, but more than two-thirds of it is on my beat.

76 Q. Do you know whether these women have children that are growing up?

A. Quite a number of them have, sir.

Q. What, if anything, do you know of the generally prevailing rule of those women that are about there recognised as prostitutes in that vicinity? How do they dress?

A. They dress according to the occasion.

Q. Ordinarily what are the characteristics of their dress? There are a certain quantity of prostitutes about that vicinity?

A. Yes, sir.

Q. How do they dress *in* there; any distinctive features with regard to their dress, those that are married women there, living with their husband?

A. No, sir.
Q. None whatever?
A. None whatever that I ever noticed.
Q. Is it not a fact that the women living there that are recognized as prostitutes, that their dress is of the most common and ordinary
77 kind generally?
A. As a general thing it is. On occasions they dress up very gayly; that is, when they go to the theatre, or to the burying-ground to feed the dead, and Josh days.
Q. That is how often?
A. Three times a year that they go to feed the dead.
Q. Ordinarily, their every-day appearance, they usually wear an ordinary kind of apparel, don't they?
A. Yes, sir.
Q. Is there any difference or distinction between their ordinary daily apparel and the apparel which is worn by married women in that vicinity?
A. Not that I ever noticed.

Cross-examination:

Mr. RYAN. Q. How is it in the house?
A. Just the same as out of doors.
Q. How do you know they were married?
78 A. I didn't say they were married. I didn't state that, by any means. I say they are living there apparently as man and wife, and not living a life of prostitution.
Q. Are there or not what are usually called kept women?
A. No, sir.
Q. How do you know?
A. Well, I know a great many women, and their husbands, or those who claim to be their husbands, I know.
Q. What other fact, apart from the fact that they have a latch-key, and the house is locked up at 11 o'clock, that they are married?
A. Because I have occasion to go through those houses once a week, and I see them continually. I know a great number of them.
Q. Is it not a fact that within your experience *that* these people who are brought her', the women, are mostly brought for the purposes of prostitution?
A. A great number of them. I may say the great majority.
79 Q. Have you run back the records in the clerk's office anterior to May, 1872?
A. No, sir. I went back in the last book that he had written up—his last records.
Q. And found there that there were only 9 marriage licenses?
A. That is what I find on his books.
The COURT. Do you know what proportion of these women are lewd women—the Chinese women coming to this country?
A. I cannot give you any idea of it.
Mr. QUINT. I object.
The COURT. According to the best information that you have on the subject.
A. Well, I should say two-thirds.
Mr. RYAN. These families that you speak of, are they composed commonly of one woman to the man, or are there two or three living in the same room?
A. No.

Q. Are there any instances in which there are two?

A. As a matter of economy, two women occupy two rooms with
80 their two husbands. Those women generally have a girl, which is the servant; and they are in the day-time, and up to 7 o' 8 o'clock in the evening, most of them, make overhalls or flannel shirts for these little Jew stores.

Q. In all of these instances you speak of, these 107 families, do they live, husband and wife, together, and are there no second wives or anything of that kind among them?

A. I don't know of but one man that claims to have more than one wife; that is the celebrated physician, Dr. Lr. Po Tai.

Q. How many has Hong Hi? Do you know him?

A. Yes, sir.

Q. Where does he live?

A. 642 Jackson street.

Mr. BERGIN. I object.

(Objection sustained.)

Mr. RYAN. What is the character of this marriage?

A. That I don't know.

Q. Did these people that you speak of come here from China married or not?

81 A. That I cannot say.

Q. You have been on the beat 8 years?

A. Yes, sir.

Q. You are familiar with those people, I presume?

A. Yes, sir.

Q. Taking these 107 families that you speak of, what proportion of the women composing these 107 families came here subsequent to the time the men were here, or vice versa?

A. I cannot form any idea of that, I know there is hardly a steamer but what some Chinamen says to me, Please to go down to the steamer: My family they come; I would like you to go and see. No Chinamen trouble.

Q. Is that almost invariably done upon the arrival *upon the arrival* of the steamer?

A. It is done very often; not every steamer, sir. No, sir.

Q. These people that you say claim to be married, have you examined, in connection with their names, the record in the county clerk's
82 office, to ascertain what proportion of these 107 families you speak of are married?

A. No, sir.

Q. All you know, then, is the fact that they live th*eir* together and have children in some instances?

A. Yes, sir.

Q. And that they occupy the same room?

A. No, sir. I don't think two women occupy the same room.

Q. How did you come to ascertain the fact that these people are married?

A. I state now that I didn't state they are married. I say they are living there as man and wife, as married people live; as to their being married, I cannot say they are.

Q. Did you ever hear them claim they were married?

A. Yes, sir.

Q. How many of them; tell me who they were that you heard claim they were married, and the names of the parties?

A. I dont know that I can do that. (Pointing.) There is a man right there for one, Ah Fook.

83 Q. You say here, there are 107 families who live together, as married people; your evidence then is confined to the simple fact, that they would live and occupy a single room, and that the house is not made a thoroughfare?

A. Yes, sir; the women work, making over*hauls*.

Q. As to whether they are married or not, you don't know?

A. They make the button-holes in gaiters and holes, &c., and over*hauls*, and shirts, and jumpers.

The COURT. Do these lewd women do any work?

A. Yes, sir; the same kind of work—the most of them sew.

Q. Do you know how many Chinese women there are in San Francisco—about how many?

A. I can only give you my judgment.

Q. According to your best judgment, how many are there?

A. Well, perhaps 1,500. There may be a little over.

84 Q. Can you tell me how many of them are reputed to be married—how many of that 1,500?

A. I can only give you my best judgment. I should say between 4 & 500, the best of my opinion upon this; last night I came around. I didn't want to go to Devoer beat. I didn't go on to Anderson's beat or on to McClaffin's beat, nor I didn't go on to O'Neil's beat or Kelly's beat, which is in the Chinese quarters, also the wash-houses; there are about 290 wash-houses in the town, and there is a considerable number of these wash-houses that some of the washmen have a wife; or one he claims as a wife, and they live there as man and wife, and there are a great number in Commercial street between Kearny and Dupont, women who claim to be wives of the men living there; some on Sacramento street, on Dupont and Commercial, up as far as California or Sacramento, on Dupont to Stockton or Washingtom, from Dupont to

85 Stockton, also on Jackson street from Dupont to Stockton, and a great many cigar and slipper factories down town, and other places that we have occasion to go at times, and find a sprinkling of women all over the town who are living there apparently as man and wife.

Redirect examination:

Mr. QUINT. Q. These people live as men and wives, and have been since your knowledge of them, as far as you have testified to it?

A. I cannot tell each particular one; as a general proposition, yes, sir.

Q. Have they demeaned and deported themselves to each other and to the public as man and wife; has that been the deportment as far as your observation has gone?

A. Yes, sir.

Q. Now, how many white people are there in this town that you can swear were married, of your own knowledge?

86 A. I can swear that I am married.

Q. Anybody else?

A. I know one more.

The COURT. That is not important.

Mr. QUINT. The only way you judge of these people being husbands and wives is your common observations in connection with other people that live in the same manner. That is the way you judge of it?

A. Yes, sir.

A. And from your judgement and knowledge*ment* of the community you would say there from 4 to 500 that were married, from their mode of life?

A. That is my best judgment; that they appear as living together as man & wife. I don't know what form of marriage they go through.

Q. But they are living together as husband and wife?

A. Yes, sir. I have seen a few of their marriage ceremonies.

Mr. BERGIN. Can you give any approximation as to the non-
87 Chinese population—what proportion of those who are reputed to be courtezans is to those who are not?

A. Well, I should say it was two to one in favor of the prostitute.

The COURT. Do you say two-thirds of the population of the country not Chinese are prostitutes?

A. No, sir. I mean Chinese.

Mr. BERGIN. No, sir; not Chinese?

A. That I cannot tell you. I cannot say as to that.

Q. Can you give us any approximation on that subject?

A. No, sir.

Testimony of Ah Fook.

Sworn; examined through the interpreter:

Mr. QUINT. Q. What is your age?

A. 20 years.

Q. When did you come to California?

A. When I was 17 years old.

Q. Are you a married woman?

A. Yes, sir. She was married a short time before she came here.

Q. Where were you married?

A. In China.

88 Q. Where is your husband?

A. Here, in California.

Q. Did you come to meet or join him?

A. She says she has been here before.

Q. On this last time?

A. She says she came here with her sister; that, as they had no money & were poor, she brought her sister here to find employment at needle-work.

Q. What is her sister's name?

A. Ah Fung.

Q. Is that one of the persons examined yesterday?

A. Yes, sir.

Q. Is your husband living in Cal. now?

A. Yes, sir.

Q. You came here to join him, with your sister?

A. Yes, sir.

Cross-examination of Ah Fook:

Mr. RYAN. Q. When did you marry?

A. About 3 years.

Q. Where does your husband live?

A. On Jackson street.

89 Q. Ask her if she was married 3 years ago, how did she come to say she married in China first, shortly before she came here?

A. She says she said before, that she married the husband a short time before she came to California.

Q. Where did you live when you were here before?
A. She said she lived in Jackson st., in a little alley that runs behind the baker's establishment.
Q. What is the name of the little alley?
A. She said they always called it Baker's alley, behind the baker's place.
Q. What part of Jackson street is it on?
A. She says that this alley runs off from the upper part of Jackson street.
Q. Ask her how long she lived here when she was here before?
A. She says she lived upwards of a year, when she went back.
Q. Did you live all of that time in this little alley?
A. Yes, sir.
90 Q. What street does that alley run into from Jackson street?
A. She says I know the place. I suppose that is enough, without asking so much.
Q. Ask her what street Jackson st. is between.
A. She says she lived in that street, and she did not know the house, nor did she know the names of the other streets.
Q. Ask her if she could start from this court-house now and go to that place where she lived and show it to somebody.
A. She says she does not need any one to go with her. She knows the way to go to the place.
(Mr. Ryan suggests that the witness be allowed to go with the officer.)
The INTERPRETER. She don't say she lived in the baker's shop, but lived in the alley behind it.
Q. Who occupied the baker's shop?
A. She says now you are foolish; she says she has been here several months, and she could not remember who kept the baker store;
91 she said if you were doing right you would not ask her so many questions; that she went home with a good intention, and she brought her sister here with a good intention.
(Here the proceedings of the court were interrupted by the noisy demonstrations of the Chinese.)
Mr. RYAN. Where does your husbands live?
A. In this, what they call Baker's alley, the alley behind the baker's store.
The INTERPRETER. This alley runs paral'el with Pacific street, between Jackson and Pacific.

Testimony of Yunn Hee.

Sworn.
Mr. QUINT. What is your age?
A. 17 years.
Q. Are you married or single?
A. She has a husband.
Q. Where does your husband reside?
A. In California.
Q. When and where were you married?
92 A. Married in China, and been married two years. She says she was married to him there, but business was not good, so he came to California.
Q. When did he come to California?
A. Last year.

Q. Did you come to join your husband?
A. Yes, sir. She says yes; that her husband sent a letter for her.

Cross-examination:

Mr. RYAN. Q. What is her husband's name?
A. Ah Kum.
Q. Where is the letter he wrote to you?
A. She says she asked some person to look at this letter for her, and after he looked at it for her it was burned.
Q. Ask her where her husband was living in California.
A. She says he was living in San Francisco, in the Chinese street.

The INTERPRETER. They have two streets they call Chinese
93 streets—Dupont and Sacramento. She only knows what they call the Chinese street.

Q. Who told her that?
A. It was wrote in a letter; he wrote in the letter Chinese street.
Q. Did her husband come to the steamer to see her?
A. Yes, sir; but the whites wouldn't allow her to go.
Q. Did he tell her where he lived?
A. She says yes; and said that when she could get off that there were persons that he was acquainted with that would accompany her to his place.

Testimony of Sie May.

Sworn.

Mr. QUINT. What is your age?
A. 23.
Q. Are you married or single?
A. I am married.
Q. When and where were you married?
A. In China, 4 years ago.
Q. Where is your husband living?
A. In San Francisco.
Q. Did you come here to join him?
A. Yes, sir; her husband told her, or called her to come.

94 Q. Did you go in obedience to his instructions?
A. Yes, sir; she says he made proper to come, and of course she came.

Cross-examination:

Mr. RYAN. What is your husband's name?
A. Ah May.
Q. Where does he live, if you know?
A. She says she knows that he lives in this alley that they call the Baker's alley.
Q. Where did she marry him—how long ago?
A. 4 years ago.
Q. How did she expect to find him?
A. She says, because on the steamer that time and take her away, but that our people would not allow her to go away; she means by our people the whites.
Q. What did she do with the letter her husband wrote to her to come on?

95 A. She says the letter is in China; why should I bring it with me? Do you think I would bring it with me?

would make application for them they could take them away. After the examination was concluded so far as the women was concerned I took my position at the gang-plank below, and on one or two occasions there was a Chinaman that came for his wife and I took him up stairs to the smoking-room and asked him to look in and see if his wife was
102 there, and if so he could take her away; on one or two occasions he said his wife was not there and didn't take any away. Those Chinamen spoke English. Those women that were there they were vouched for in most cases by the Chinamen here or some of the employees of the company or officers of the vessel.

Mr. BERGEN. I don't suppose that is relevant.

Mr. RYAN. I put in evidence the notice to the captain.

Mr. BERGEN. I object to it as irrelevant and incompetent and not proving anything.

Here the court took a recess until half past one o'clock.

AFTERNOON SESSION.

Testimony of Ah Yek.

Sworn; examined through interpreter.

(The witness steps into the adjoining room and looks at the 22 Chinese women in custody.)

Q. How long have you lived in Cal.?

A. He says he has been here about 10 years, but he has been
103 back to China; he says he should think 15 or 16 years since he first came here, but he has been back to China.

Q. When did he last come from China?

A. He came on the steamer Japan that came in a few days ago.

Q. Did you ever see a woman that was in that room before? If so, state where & when.

A. He has seen them on the steamer Japan.

Q. Ask him to tell all that he knows about them, if anything?

(Mr. Bergin objects to the question.)

Mr. RYAN. Q. Do you know if these women in that room are prostitutes, lewd women, or debauched women that you seen in there?

Mr. BERGEN. I object to that question as leading.

Mr. RYAN. State all you know about those women in reference to prostitution, lewdness, or debauchery?

A. He says he could not say; that he was on the same steamer with them, but he didn't go with them, & did not keep in their com-
104 pany, & could not tell what they were. He says the women were in one portion of the steamer and the men in another portion.

Q. Ask him if he saw them at any time during the voyage; &, if so, how they conducted themselves?

A. He says he could not tell what their acts were; that while they were on the steamer, the greater portion of the time he had but little to do with them; some would come up above and go down below; some of them would talk with the married portion on board of the steamer and others would not; he could not tell what the' were.

Q. Didn't you tell me 10 min. ago that those women were playing with the men on this voyage?

(Mr. Quint objects.)

Mr. RYAN. That is a fact.

Q. Did you hear these women use any profane or vulgar language during this voyage?

A. He says he could not tell who they were; that some he would
105 hear talk rough & others he would not, but who they were he could not remember or tell. He says he don't remember them, that he didn't take interest in it, & could not remember.

Q. Ask him if he didn't make a different statement on Dupont street, near Commercial street, within the last 20 minutes?

(Mr. Quint objects to the question as irrelevant, immaterial, and inadmissible, & that they cannot impeach their own witness. Objection sustained.)

Mr. RYAN. Q. Do you know anything in reference to the general character of these women?

(Mr. Quint objects.)

Mr. RYAN. Q. Do you know anything in reference to the general reputation of *this* women.

A. He says that he does not know; that some person called Son Fing, that he would probably know better than he would; that he don't know.

Cross-examination:

106 Mr. QUINT. Q. You did have an interview with Mr. Ryan, the prosecuting atty., did you?

A. He did with me.

Q. Do you talk English—let me see?

A. A little.

Q. How much can you talk? What day of the week is this?

A. Thursday, I suppose.

Testimony of Chung Fing.

Sworn.

Mr. RYAN. Q. Have you ever lived in California?

A. Been here before.

Q. Ask him now—he said he was here from China?

A. At this steamer.

(The witness goes into the adjoining room & observes the women.)

Q. Ask him to tell all he knows about these women, if anything?

(Mr. Bergin objects.)

Mr. RYAN. Ask him to tell all he knows about them with reference to prostitution, debauchery, or lewdness?

107 A. He says he knows something of them.

Q. Let him tell what he knows of them?

A. He says some of them are prostitutes.

Q. How many of them?

A. He was going on to say that he had one that was a relative of his and that he had raised her or taken care of her since she was very young. He says that she had been brought here against her will to be a prostitute. He said that she was called Chere Kung once, but he don't know what her name is now.

Q. He raised this one, did he.

A. He says that he took care of her when she was young.

Q. Ask him how long ago she left him?

A. He said that he saw her last year on the 24th of the 11th month.

Q. Ask him if he knows of any of the others being prostitutes?

A. He says he knows.

Q. How many—which of them?

108 A. He says he don't know their names.

Mr. RYAN. I ask that the witness be allowed to point them out.

Mr. QUINT. If this man knows them let him designate who they are.
Mr. RYAN. He don't know their names.
The COURT. Let him go in & point them out.
The witness designates the ones he refers to—7.
Mr. RYAN. To what class do those women in there belong? Are they prostitutes or not?
A. He says they are prostitutes.
Q. He made an exception in them?
A. He says he did not recognize her.
Mr. QUINT. Who have you talked with in the last two hours?
A. No one.
Q. How long since you have talked with any one about this case or about these women?
A. I have not talked with them to-day.
109 Q. You have talked with no one about this case or about these women at all have you?
A. No.
Q. Where do you live?
A. On China st.—Dupont st.
Q. What number?
A. He says he came here lately & he don't know.
Q. Have you ever been in Cal. before?
A. I have been here, but a long time ago.
Q. How long since you left Cal.?
A. Over 10 years ago.
Q. You left Cal. 10 years ago?
A. Over 10 years.
Q. When did you first come to Cal.?
A. He says in the third year of the reign of Chan Far.
Q. When would that be?
A. He says about twenty years ago.
Q. How long did you live in Cal. before you returned to China?
A. Two years.
Q. Lived in Cal. two years, & then returned to China?
A. No, 22 months.
Q. Where did you live during that 22 months?
110 A. He says that he lived in the second city. I suppose he means Sacramento, and he was taking goods from there to the mountains.
Q. Then during the 22 months that he lived here, he lived at the second city?
A. Sometimes in the city & sometimes in the mountains. He was taking goods from Sacramento to the mountains.
Q. Did you then go back to China?
A. Yes, sir.
Q. And you came from China by the last steamer Japan, did you not?
A. Yes, sir.
Q. Where did you live while you were in China?
A. Near Canton, at the district where the Lenn Lui people live.
Q. Then you came to California about 20 years ago, & lived here about 22 months, and returned to China and lived there until you returned on the last steamer?
A. Yes, sir.
Q. Now, what was your business while you were living in Sacramento?
111 A. He says that a part of the time *that* he was engaged in taking

provisions from Sacramento to the mountains, & a portion of the time was mining.

Q. Where did you mine?

A. He says he worked at the North Fork & Salmon Falls, or Salmon Fork & Mokelumne Hill.

Q. How long did you live at Mokelumne Hill mining?

A. Several months.

Q. How long ago was that?

A. About 20 years ago.

Q. What were you doing in China?

A. He says he was connected with N-A-N was the name of the store, and he was connected there with a person to employ vessels to bring persons to Cal. He says there were no steamers at that time, & they secured sailing-ships.

Q. What were you employed in, or what were you doing while in China?

A. He said acting as an agent, with some other persons of the
112 firm-name of Wan Huing, & engaged to bring passengers to Cal.

Q. Where is that store?

A. He says the place of his friends was Lenn Lui place.

Q. What vessel did you secure, if any?

A. He says, one ship are named Weigar.

Q. Any others?

A. One named William, & he states another one, he didn't speak the name exactly.

Q. There are 3; any others?

A. He says that there was on' that he call Weig John, or something of that name. He says that they engaged the ships, & afterwards the ship didn't sail, & there was $8,000 damages paid for the ships not sailing, because they didn't find the passengers, so they paid $8,000.

Q. You were instrumental then in securing 3 ships for passengers?

A. He says more, but he does not remember these names now, that is about all that he remembers.

Q. Are you a married or a single man?

A. He has a wife.

113 Q. Where is your wife living?

A. He says, my wife is living at home in China, & the other wife, or the other concubine or second wife is here.

Q. Then you have two wives, one living here and the other in China, have you?

A. Yes, sir; the older or principal wife is in China, & this secured wife is here.

Q. Have you any children?

A. Yes. sir.

Q. How many children have you?

A. Two boys & 3 girls.

Q. Are those by your first secured wife?

A. He says that by the secured wife there was one child, one girl. The others were by the first or older wife.

Q. Where was your wife living while you were in China, your second wife?

A. China. He says that the second wife came with him in this steamer. She is a good person, & of course she would stay with him.

Q. When did you marry your second wife?

114 A. 10 years ago.

Q. How long ago did you marry your first wife?
A. A long time, upwards of 20 years.
Q. Did you marry your first wife before you came to Cal.?
A. He says he married the first wife, & he afterwards came to this country.
Q. And then afterwards went back & married his second wife?
A. Yes, sir.
Q. Are double marriages recognized by the customs & laws of China?
A. He says yes, if they have money.
Q. If they have money they can marry as many wives as they choose?
A. Yes, sir; if they choose. If they wish to get one wife they can, & two they can, & so on.
Q. Now, how long after you married your first wife before you came to Cal.?
A. Several years. A few years; between 3 & 4 years.
Q. You were married, then, 3 or 4 years when you came to Cal.,
115 & you left your first wife at home?
A. He did not bring her here.
Q. How long after your return was it that you married your second wife?
The COURT. I don't see how that is material.
Mr. QUINT. What country do you say you lived in while you were in China?
A. Sein-Sein.
Mr. BERGIN. Where is that; at Hong-Kong, or whereabouts?
A. He says a distance of one night & one day boat-sail from Canton.
Q. How far *is* Hong-Kong is it?
A. He says that in going from Hong-Kong it would take two days to reach it in a boat.
Q. Your 2nd wife came with you on the trip, did she?
A. Yes, sir.
Mr. RYAN. I object to that because it is not proper cross-examination.
Mr. QUINT. Where are your family living now?
A. He says he believes it is Dupont street. He says they have not rented a place yet—any certain place; they are living temporarily
116 with some relatives.
Q. Who are you living with?
A. With friends of his.
Q. What are their names?
A. Fee Fing.
Q. What do they do?
A. He says he has been here a long time; deals in provisions.
Q. Between what streets is it?
A. He knows the name of the street he is living on, but don't know the other street.
Q. Have you ever seen that Chinaman sitting over there? (Pointing to the commissioner's interpreter.)
A. He says he has heard of him, but had not seen his face.
Q. Have you ever seen Mr. Ryan before? (Pointing to Mr. Ryan.)
A. No, sir.
Q. How was it that Mr. Ryan came to know what you would testify in this case?
Mr. RYAN. He has seen me.
Mr. QUINT. What does he say?
A. He says that he don't know how he found about it, but that

some friends of his told him that if he wanted to get this young
117 woman back he must go down & see all of the others, & get her back.

Q. That is the way he came to be a witness here. Ask him if within the last two hours he has not had a conversation with that interpreter & with Mr. Ryan, who sits there, with regard to this case, & what his testimony would be.

A. He has not.

Q. Hasn't he had any conversation with either of those gentlemen to-day about this case or these women?

A. He says that after he got into the court-house that he asked a friend of his to interpret for him.

Q. Who was that friend?

A. A person named Ah Sie; a person that came from the mountains.

Q. I want to know whether he has not within a day or to-day had a conversation with that interpreter there in the presence of Mr. Ryan with regard to what his testimony in this case would be; whether or not he has had such a conversation?

A. He says no; that the person named Ah Sy interpreted for him.

(By suggestion of Mr. Quimt the women are brought in, one at a time, before the witness, who is questioned as follows:)

Mr. QUINT. When & where did you know that woman?

A. He says, this one I don't know very well; I said so before.

Mr. RYAN. That is the one he said he didn't know very well.

Mr. QUINT. Where did you first know her?

A. He doesn't know her.

Q. Do you know her name?

A. He doesn't know her name.

(The woman states her name to be See Choy.)

(Another one is brought into court.)

Mr. QUINT. Where & when did you know this woman?

A. He said, I don't know this woman.

Q. Do you know her name?

A. No.

119 Q. Didn't you say a little while ago that this woman was a prostitute?

A. He says he don't know these two. The woman states her name to be Chung Ti Yung.

(Another one enters.)

Mr. QUINT. When & where did you see this woman? I don't know this one.

Q. Do you know her name?

A. He doesn't know her name.

Mr. RYAN. Didn't you see her in this room a while ago?

A. He says he didn't mean to say that; but that all those on that other side were prostitutes, but on this side he didn't know.

The COURT. What is her name?

The woman answers, Sin Chow.

(Another one enters.)

Mr. QUINT. When & where did you know this one?

A. I don't know this one very well.

Q. Do you know her name?

A. I don't know.

Mr. RYAN. Does he know whether she is a prostitute or not?

A. He says, I cannot tell that.

(The woman gives her name as Ah May.)

120 (Another one enters.)

Mr. QUINT. When & where did you know this one?

A. He says, I don't know her, but then she must be a prostitute.

Q, He don't know her; do you know her name?

A. He doesn't know her name. He says she doesn't look the same. If she were not a prostitute she would not look as she does. He doesn't know her, but she must be a prostitute.

Q. Is that all that he knows about her? (No answer.)

The COURT. Why does he say she is a prostitute?

A. He says because she came here with prostitutes & she must be a prostitute. He said she was on the steamer, & she played on the steamer; & he says that when on the steamer, that the whites there & the Chinese, that they all played together; & that she must be a prostitute.

Mr. QUINT. Did you ever know her before she came on board the steamer?

A. Only knew her on the steamer.

121 (The woman states that her name is Sin Chy.)

(Another one enters.)

Mr. QUINT. Do you know that woman?

A. He says they came all together, these prostitutes, but that he don't know her.

Q. You never knew her until she was on board the steamer, did you?

A. He says, how should I know that when I was in China; I never used to go to prostitutes.

Q. Did you ever know that woman, or any one of these women until you met them on board the steamer?

A. He says there was a few that he knew in Hong-Kong, but the others, that he saw them on the steamer.

The COURT. Ask him if he got acquainted with any of these on the steamer.

A. He says the way he learned it was, that some woman who was on the steamer named Si Hee, told him that in such a room & such;

122 that in such & such a room, they were family-rooms.

Q. Ask him if that is all he knows about it?

A. He says that that is the way he knew them, & also another way; that on the steamer some one said to them, What makes you dress & look so nice? & she said, Of course if we are prostitutes, we are dressed nice. She said some one on the steamer spoke the same of the women, & they said that speaking of their dress being nice & fine.

The COURT. Can he identify them?

A. He cannot tell. He can tell the face, he thinks. He said there were some that are not here. He cannot tell whether that is the one that spoke or not. There are several that are not arrested.

Mr. QUINT. There were some Chinese that he considered prostitutes that were on board the steamer that are not here. He says some that went off were prostitutes & some were not.

123 Q. Some of those that used this expression are those that are not here now.

A. He says they are here; those persons that spoke that way.

Q. Did he ever hear this woman speak this way?

A. He said the women had quarrels amongst themselves on the steamer. He said there were several hundred passengers on the steamer, & they could pick out the prostitutes.

Q. Did he ever hear this woman say anything about it.

A. He said he could not recognize this woman. There were so many women he could not say that he recognizes this woman as one of them.

Q. Were those that were quarreling the ones that used this expression, Why shouldn't we dress well, as we are prostitutes?

A. Yes, sir.

Q. Those that were quarreling?

A. He said he could not recognize this woman.

(The woman states that her name is Yong Hee.)

(Another one enters.)

124 Mr. QUINT. Do you know this woman.

A. He doesn't know her name, but she is a prostitute.

Q. Do you know her?

A. He doesn't know her name.

Q. When did you first know her, & where?

A. He says that in walking the streets of Hong-Kong, in the upper portion, he had seen her.

Q. When was that?

A. About the time the steamer started.

Q. About that time you saw her walking on the streets of Hong-Kong?

A. Yes, sir.

Q. That was the first time that you ever saw her?

A. Yes, sir; he saw her just about the time he was coming down to the steamer.

Q. Anybody with her?

He said there were others walking with her.

Q. You next saw her on board the steamer, did you?

A. Yes, sir.

Q. And that is all you know about her of your own knowledge?

125 A. He says that at the time they were coming on the steamer for the passage *that* they went to the court-house & registered their names, & the different persons that were walking around there said that these persons were coming here & were prostitutes.

Q. I simply ask him with regard to his own knowledge. Have you any knowledge of your own?

A. He said if he didn't know the woman was a prostitute he should not say so. He would not be so cruel.

Q. Have you ever had intercourse with this woman, or any other of these women that are in there?

A. He said, No; I don't go with prostitutes at all.

Q. Do you know, sir, of any person, of your own knowledge, now, ever having had intercourse with this woman, or either of the others that are in there?

A. He said that friends had told him.

Q. I ask him now, of his own knowledge. Do you know of your

126 own knowledge that this woman, or either of the others in there, have ever, at any time, had any intercourse with any man? Yes or no.

A. He says that if I had slept with them, or had intercourse, that he would know it; but that he hadn't been with them himself. He said he didn't come here to-day to have anything to do with these, only the one inside.

Q. What one was that?

A. He says she is not here.

Q. Then how did he come here to interest himself about one who is not here.

A. He says that some one said there were prostitutes here, & they had been detained, & had not gone away, & he supposed that one of them was the one he speaks of, but he found she was not here.

Q. Then she was the one he came here to interest himself about, was she?

A. Yes, sir.

Q. This one that he came to interest himself about, was she a prostitute?

127 A. He said that some one had told him that she had been taken against her will & sold to some other person, and that person had sold or brought her here to be a prostitute; but when he came here he didn't find her here.

Q. Answer my question. Do you, of your own knowledge, know whether this woman who is now present, or either of the other women there, had intercourse with men, *of your own knowledge?*

A. He said that he hadn't slept with her himself, so of course he couldn't tell. If he had he would probably know. He said, When she was living, of course, with persons, you don't expect I would go & peep in to see what was going on.

The COURT. That *in* enough of this witness.

The woman states her name to be Ou Wai.

128 *Testimony of Fang Hoy.*

Called; sworn.

The COURT: Q. What is your business?

A. Chinese clothing.

Mr. RYAN. Do you know the differences in China between the prostitutes & other women, so as to distinguish them by their dress?

A. There is a distinction between whore & Chinese good woman.

Mr. RYAN. Tell the court what that distinction is.

A. Chinese high class we call mandarin or rich folks. They dress in silk garments; common people dress in cotton or woolen. But the whore or prostitute, they have dresses just like rich folks.

Q. How do those prostitutes in China usually dress?

A. Wide sleeves, & have what we call a fancy border on the dress.

Q. Do they have any different colors that distinguish them?

A. No, sir; they have no different colors; ordinary Chinese

129 colors—blue, yellow, or purple; anything like that.

Q. Don't the private women have wide sleeves?

A. The Chinese women have wide sleeves, but not so wide as the whore.

Q. Be good enough to tell the court your business here in town.

A. Yes, sir. I was, when I first came to this country, a cigar-maker & photographer, and I changed from photographer into produce business now?

The COURT. How long have you lived in this country?

A. I was in this country for the last ten years before I went back to China.

(The witness here inspects the dress the women.)

Mr. RYAN. From what you have seen of these women, just tell the court.

A. (Int.) I have no doubt they are whores.

The COURT. Do private women in China wear such colors as they have?

A. They have the same colors almost, but their sleeves are not
130 so wide in the appearance of their dressing. The Chinese ladies generally wear a skirt; whores, very few of them wear skirts.

Cross-examination of Fong Hoy:

Mr. QUINT. Q. Where do you say you are in the produce business?
A. 743 Sac'to st.
Q. How long have you been there?
A. Nearly 2 months.
Q. Where did you live prior to that?
A. I lived in 605 Sacramento street between Kearney & Montgomery.
Q. What were you doing there?
A. I simply roomed there.
Q. That was all of the occupation you had?
A. Yes, sir.
Q. Are you a married man?
A. Yes, sir; I have been married about 16 months.
Q. Where did you marry?
A. In China. I have been living in California for the last 10 years. I went home & got married in China, last year, about April. I left my wife in China. I have only one wife.
131 Q. You intend to send for her one of these days don't you.
A. I don't know whether she will come here or not.
Q. You intend to send for her if she is disposed to come.
A. If I make money enough to support my wife in California I will send for her.
Q. And live with her as your wife; that is what you intend?
A. Perhaps so.
Q. Is not that the ordinary custom among Chinese here?
A. Not the ordinary practice; if any body wishes to send for his family to live in this country he sends to China.
Q. Don't you know it is the ordinary custom for Chinese men to go back to China & get married & leave their wives behind them.
A. Yes, sir.
Q. Then isn't it common as soon as they get able to send for those wives & bring them here.
A. Some do send for their wives to come here.
132 Q. What would you think if you should send for your wife, & you should come on the steamer & should not be permitted to see her?
(Mr. Ryan objects.)
The COURT. I would like very much to see those husbands. I have been very much surprised that the husbands of those women were not here; a subpœna would have brought them here very easily, I imagine. I tell you now they can come here & see these women.
Mr. RYAN. This gentleman has testified that whenever a husband made application to see his wife on the steamer he was allowed to do it.
Mr. QUINT. You have been testifying with regard to the apparel which these women have, & you say that is the apparel worn by prostitutes. Is that so?
A. I think every one of them are prostitutes.
Q. Have you been in the habit of going along up Pacific st.
133 & on Dupont street where these Chinese women that are prostitutes congregate?
A. No, sir; I scarcely ever go in Pacific or Jackson sts. I generally go in Sacramento & Montgomery street.

Q. Have you been along in the diffierent streets where you see them frequently?

A. No, sir.

Q. Then you are not prepared to speak as to the apparel which they wear here in this city?

A. I know Jackson st. belongs to the Chinese neighborhood.

Q. Don't you know the fact that these women that are called & are usually street prostitutes, then, wear a very common kind of garment?

A. Well, when China women come to this country first.

Q. Don't you know that everywhere, where they are, they wear the common garments?

A. Yes, some of them.

Q. Have you ever seen of them there on either of these streets wear any such clothing as these women have got there?

134 A. Well, I suppose those women came here in Jackson st. or some other streets, & when they came first——

Q. Answer my question; tell me now if you have ever seen women that are considered & treated as prostitutes in the neighborhood of Jackson st. or Dupont st., where these women generally are, if you have ever seen them wear a dress like these women?

A. Yes, sir.

Q. Tell me one of them?

A. How can I tell the name of them seeing them on the street.

The COURT. How do you account for these women being dressed so well? What did you intend to say in connection with their dress?

A. The master in China must dress the woman before she can come here, because she expects to bring her here to make money. If she has a new dress she can lead the life of prostitution.

Mr. BERGIN. Their dress is the only reason that you believe these persons are prostitutes?

135 Q. The Chinese women coming to this country, if she is a private woman either with her cousin or her husband coming to this country; prostitutes come here all in a raft.

Q. I didn't ask you that; you don't know any of these women personally, do you?

A. No, sir.

Q. You say they are prostitutes?

A. Yes, sir.

Q. And the reason you assign for so saying is because of their dress?

A. Yes, sir.

Mr. RYAN. What is the custom as to respectable Chinese women as to traveling in leaving their country; or traveling in it; is it customary to have a male travel with them or not?

A. Very few of them travel; they want to stay at home most; except in China a mandarin will take his wife along to different provinces. Those women come here the same as *the same as* the merchants have their wives living in this country; they send their wives by their cousins or brothers. They must have one for protection.

136 The COURT. What proportion of these Chinese women coming here were married, do you know?

A. I don't know. It is hard to say; I think not more than half of the Chinese women are married.

Q. How many out of a hundred of these Chinese women who come here are married women; those who come here alone. How many in a hundred?

A. I cannot tell how many in a hundred, I think one or two in a thousand, perhaps.

Q. You mean to say but very few of them?

A. Very few of them, sir.

Q. Is it customary or not for married women to come here to join their husbands—for their husbands to meet them at the steamer?

A. I told you a while ago. The Chinese wife comes here if she intends to come & join her husband, she must have some one to take care of her in the steamer to come to this country.

Q. Doesn't the husband usually meet her at the steamer when
137 they come?

A. Generally one husband comes down to the steamer to join her.

Q. What is the custom among Chinese wives about destroying letters that they get from their husband, burning them?

A. Of course, after they get through, they know what they are, & they burn the letters.

Q. They don't preserve the letters they get from their husbands?

A. They preserve them*selves* some times, perhaps. If you find a letter of no use you see you must burn it up.

Testimony of Fung Pak.

Sworn; examined:

The COURT. What is your business.

A. Importer.

Q. How long have you lived here?

A. 7 years.

Q. Do yo' know the difference or distinction in China as to the dress between prostitutes & married women of the *the* respectable class?

A. I cannot tell.

138 Q. You don't know what the difference is, if any?

A. No, sir. I am a young man and have been out of the business so long that I can't tell. If I know anything I can tell easily. I could not tell because our father in China told me better not say anything if I don't know.

Q. As to the custom among your people when they travel; are they usually accompanied by the men? Suppose, for instance, a Chinaman wants to bring his respectable wife from China to San Francisco, would he permit her to come alone in the steamer?

A. Very few.

Q. How would she come?

A. Come with her husband.

Q. Suppose the husband was here & sent for her there, how would she come?

A. I understand few do that way. A gentleman with business in this city cannot go back, but tells a friend going over to bring his wife over.

139 Q. Generally sends a friend if he cannot go himself?

A. Not generally, but 2 or 3.

The COURT. Do you know the proportion of married women coming here from China?

A. There are some.

Q. What proportion?

A. I cannot tell, but I understand there are some on Sacramento

st. I don't know how many. I have no family here. My wife is in China.

Mr. RYAN. When these women who come on in the vessel at one time, how many married women are generally among the number when they come in the steamer?

A. I don't know.

Mr. BERGIN. I object.

(Objection sustained.)

Mr. RYAN. Do you know how many women in this city; what number of prostitutes there are? Have you any idea?

A. No, sir.

Q. Have you any idea of the number of married Chinese women?

A. No, sir.

140 Cross-examination of Fung Pak:

Mr. QUINT. Q. You are a married man?

A. Yes, sir; have been married 5 years.

Q. Married in China?

A. My wife is in China. I was married there.

Q. And you have your wife there?

A. Yes, sir.

Q. Did you go back from here to China to marry there?

A. I go back from Australia to China about 6 years ago.

Q. While you were there you married & returned home to California to attend to your business?

A. Yes, sir.

Testimony of Chu Pou.

Sworn; examined.

Mr. RYAN. Are you a married · of China?

A. Yes, sir.

Q. What is your business?

A. I am inspector of the companies—the Geu Wung Company.

141 Do you know the difference between manner in which respectable women in China dress & the way prostitutes dress? Is there any difference?

A. I cannot tell.

Q. How long is it since you have lived in this country?

A. 4 years.

Q. You have seen whores in China, haven't you?

A. Well, I couldn't tell without men told me so.

Q. Are there not certain quarters of the town in which *you* live *in* usually, in China?

A. No, sir.

Q. There is no way of distinguishing them by th*ere* dresses at all?

A. No, sir. It is very difficult to tell whether they are prostitutes or famil'es.

Q. Isn't there a difference in the width of the sleeves between the family women & the prostitutes; the sleeves of their garment & the way they are bordered?

A. No, sir. For little young girls about 12 or 10 years; that is, littler girls, maid-servants, they can tell & know if they are girls.

Q. What sort of sleeves do they wear?

A. The sleeves of the little girls.

142 Q. There is no difference, then, between the sleeves of the respectable woman in China & whores?

A. No, sir.

Q. In the width?

A. No, sir.

Q. Any difference in the colors of their dresses?

A. No, sir.

Q. How do you know if you say you cannot distinguish them by the dress?

A. If a women is walking the streets you cannot tell whether she is a married woman; besides, because some of them married woman walk the streets; but there are a higher class of woman that are not going out walking around the streets; but some of a poorer class women walk around the street. Some of the whores or prostitutes may walk the streets, but you could not tell which is the prostitute or the family woman.

Q. Cannot tell by the dress?

A. No, sir.

The COURT. Are you a married man?

A. Yes, sir. My wife & family are here.

143 Q. Do you know what proportion of women coming from China to Cal. are married?

A. My family came with my cousin.

Q. Do married women come here by themselves, without their husbands?

A. She may with some relative.

Q. Without any relations on board the ship?

A. I don't think they do.

Q. Did you ever know of an instance of 15 or 20 married women coming in a ship together without their husbands?

A. No, sir.

Q. Can you tell me how many in every hundred Chinese woman come to this country are married—come here to join their husbands?

A. I could not tell. I don't know.

Cross-examination:

Mr. QUINT. Q. What is your age?

A. I am 35. I was 30 when I left China; have been living here since I was 30. I was married at 23 years old.

Q. Did you bring your wife to Cal. when you came here?

144 A. No, sir; afterwards. My wife came last November. I sent after her.

Q. Now what part of China did you live in before you came here?

A. Canton City.

Q. What part of the city do you live in here?

A. 709 Dupont st.

Testimony of Ah Lak.

Sworn.

Mr. RYAN. Q. How long have you lived in San Francisco?

A. 5 years.

Q. What is your business?

A. Grocer.

Q. Do you know the difference, if any, that exist between the dress of prostitutes and respectable women in China?

A. No, sir.
Q. Is there any difference in the dress; do they dress any differently.
A. Yes, sir.
Q. Do married women and whores dress all the same way?
A. The same dress exactly.
145 Q. Do respectible women as a custom travel alone usually, or with men accompanying them, or women?
A. Women.
(Here the examination is continued through the interpreter.)
Q. Ask him if there is any difference in the dress?
A. He says he cannot distinguish the difference in dress.
Q. Ask him if he knows if there is any difference or not.
A. He cannot separate them.
Q. Ask him as to what is the custom on the part of respectable females in travelling, whether they usually travel alone or accompanied by some male person?
A. The girls or servants generally go with them.
Q. That is in traveling in China, is it?
A. Women servants or girls go with them.
Q. Suppose respectable women coming from China to S. F., do they usually travel alone?
A. Some come with their husbands here.
146 Q. What is the general rule as to respectable females?
A. He says that some of them come with their husbands, & others come with a brother or some relative; generally with some friend or some relative. If the husband is living here he would have some friend in China accompany them. Sometimes it would be the brother & sometimes the husband, sometimes somebody else.

Testimony of Ah Pay.

Sworn; examined through interpreter.
Mr. RYAN. Q. Do you know whether there is any difference in the dress to distinguish respectable Chinese females from whores or prostitutes?
A. He said he could not distinguish between them.
Q. Do you know as to whether there is any difference in the dress of your own knowledge?
A. He said that he could not tell; that he does not go out in
147 the street a great deal.
Q. Might there be a difference and you not know it?
A. He says he is not posted in that; that he is in the store most of the time.
Q. What is your business here?
A. Druggist, in the store of Kee Sing Fung.
Q. Where is that?
A. On Sacramento st., 742.
Q. What is the custom in China in reference to females in traveling, do they usually travel alone or accompanied by male persons?
A. He do's'n't know anything about it. He is a business man, & he doesn't attend to these things.
Q. When women leave China to come to this country, respectable Chinese women, how are they usually accompanied, if you know?
A. He don't know.
Q. Do you know of any instance of any woman having come here from China, any women acquaintances of yours, either wives or relatives?

148 A. He said there were some that had brought their wives, but he was not acquainted with their husbands.

Cross-examination of Ah Pay:

Mr. QUINT. Q. What is your age?

A. 35.

Q. How long had you lived in China before you came to this country?

A. He said he been in California 4 or 5 years.

Q. Where have you lived since you came to California, in what place in San Francisco?

A. In Sacramento st.

Q. What business are you in?

A. Druggist.

Q. Are you a married or single man?

A. My wife is in China.

Q. How long ago did you leave your wife in Chiña?

A. 5 or 4 years. He had been in California that time.

Testimony of Yok.

Sworn; examined through interpreter.

149 Mr. RYAN. Q. How long have you lived in this country?

A. 10 years or over.

Q. Is there any difference between the dress of a prostitute & that of a respectable woman in China?

A. About the same.

Q. In the width of their sleeves?

A. About the same.

Q. Is there anything that distinguishes her from the respectable women in China?

A. He says that there clothing & appearance is about the same.

Q. Do you know anything about the customs of respectable Chinese women traveling to this country from China; how they are accompanied?

A. He doesn't know that.

Q. Do respectable women, when they leave China *to* San Francisco, usually come alone or accompanied by some relative or male person, if you know?

Q. He say' that some of them have relations that bring them here, & some come without relation'.

Q. As a general proposition, how do they come?

A. He could not tell.

150 Q. Have you ever known a case in which 20 or 25 respectable women have come altogether alone?

Mr. BERGEN. That would not prove anything.

A. He could not remember, he says.

Cross-examination of Yok:

Mr. BERGIN. Q. What is your age?

A. 46.

Q. Single or married?

A. He has a wife in China.

Q. What business is he engaged in?

A. Provision-store; Chinese provision and groceries; wholesale & retail.

Q. For how many years has he been engaged in business here?

A. He said that he had been here & gone back to China; & that this last time he had been engaged in this place 3 years, but he had been engaged in business before.

Mr. RYAN. We rest.

Mr. QUINT. I ask that Ah Sin be called in; & I propose to produce a person that claims to be her husband.

(Ah Sin is brought into court, but fails to recognize the party who claims to be her husband.)

Testimony closed.

Fourth district court.

IN THE MATTER OF THE APPLICATION OF CHY Lung, under a writ of habeas corpus. } August 26th, 1874.

I, Grant I. Taggart, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the evidence in the above-named matter, taken in the fourth district court of the State of Cala., and filed in my office, as shown by the records of my office.

Witness my hand and the seal of the court, this 5th day of November, A. D. 1874.

[SEAL.] GRANT I. TAGGART,
Clerk Supreme Court, State of California.

152 (This writ of error amended by inserting the name of Chy Lung for Ah Fook, by consent of counsel, filed, & order of court of 22 March, 1875. D. W. M., clerk.)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment, upon application of Chy Lung for a writ of habeas corpus addressed to J. H. Freeman, R. K. Pitrowski, commissioner of immigration, and William McKibben, sheriff of the city and county of San Francisco, which judgment was rendered on September 8, A. D. 1874, and now remains of record in said supreme court of California, a manifest error hath happened, to the great damage of the said Chy
153 Lung, as by her petition appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinc'ly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America at the city of Washington, in the District of Columbia, together with this writ, so that you have the same at said Supreme Court on the second Monday of October next, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid be' inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 23d day of September, in

154 the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

[SEAL.] L. S. B. SAWYER,
Clerk U. S. Circuit Court, 9th Cir., Dist. Cal., &c.

The above writ of error is hereby allowed.

WM. T. WALLACE,
Chief-Justice of California.

Service of the within writ of error and receipt of a copy thereof admitted this 24th September, 1874.

THOS. P. RYAN,
Atty. for People State California.
ESTEE & BOALT,
Attys. for Commissioner of Immigration.
McALLISTER & BERGIN,
Attys. for J. H. Freeman.

(Endorsed:) United States Supreme Court. Chy Lung vs. J. H. Freeman, R. R. Pitrowski, Wm. McKibben. Writ of error. Filed Septem-25, 1874. Grant I. Taggart, clerk.

155 UNITED STATES OF AMERICA, *ss:*

To J. H. Freeman, R. K. Piotrowski, commissioner of immigration, and William McKibben, sheriff of the city and county of San Francisco, State of California, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1874, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, in a certain application of Chy Lung, made August 29, 1874, to the supreme court of the State of California for a writ of habeas corpus, addressed to you, and the judgment rendered thereon on September 8th, A. D. 1874, wher'in said Chy Lung is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error men-
156 tioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable William T. Wallace, chief-justice of the supreme court of California, this 23rd day of September, A. D. 1874, and of the Independence of the United States the ninety-ninth.

WM. T. WALLACE,
Chief-Justice.

Service of the within citation and receipt of a copy thereof admitted this 24th September, 1874.

THOS. P. RYAN,
Atty. for People State California.
ESTEE & BOALT,
Attys. for Commissioner of Immigration.
McALLISTER & BERGIN,
Attys. for J. H. Freeman.

(Endorsed:) United States Supreme Court. Chy Lung vs. J. H. Freeman, R. K. Piotrowski, & Wm. McKibben. Citation. Filed September 25th, 1874. Grant I. Taggart, clerk.

157 Know all men by these presents that we, O. K. Freeman and B. Gilman, are held and firmly bound unto J. H. Freeman, R. K. Piotrowski, and William McKibben, sheriff of the city and county of San Francisco, in the full and just sum of five hundred ($500) dollars, to be paid to said J. H. Freeman, R. K. Piotrowksi, and William McKibben, their heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this September 23rd, A. D. 1874.

Whereas lately, on a certain application of Chy Lung, made August 29, A. D. 1874, to the supreme court of the State of California for a writ of habeas corpus, addressed to said J. H. Freeman, R. K. Piotrows-
158 ki, commissioner of immigration, and William McKibben, sheriff of the city and county of San Francisco, said supreme court did, on September 8, render judgment therein against said Chy Lung; and whereas said Chy Lung has *at*tained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the aforesaid judgement, and a citation directed to said J. H. Freeman, R. K. Piotrowski, commissioner of immigration, and William McKibben, sheriff of the city and county of San Francisco, citing and admonishing them to be and appear at a Supreme Court of the United States to be held at the city of Washington, D. C., on the second Monday of October next:

Now, the condition of this above *al*ligation is such that if the said Chy Lung shall prosecute said writ of errors to effect, and answer all damages and costs if she fail to make good her plea, then the above *al*ligation to be null and void; otherwise the same to remain in full
159 force and effect.

O. K. FREEMAN.
B. GILMAN.

The form of the within bond and the sufficiency of the sureties thereto are hereby approved.

WM. T. WALLACE,
Chief-Justice.

(Endorsed:) United States Supreme Court. Chy Lung vs. J. H. Freeman, R. K. Piotrowski, & Wm. McKibben. Bond. Filed September 25, 1874. Grant I. Taggart, clerk. (Copy.)

160 In the supreme court of the State of California.

CITY AND COUNTY OF SAN FRANCISCO.

IN THE WRIT OF HABEAS CORPUS ON BEHALF of Ah Fook, Shee Mowy, Ah Fung, Ah Qui, Ah Lin, Tie Hee, Lin Choy, Ah Mowy, Ah Hoe, A Kee, Wong Choy, Ah Tuck, Low Ying, Ah King, Ah Suck, Yung Hee, Ah Kue, Yung Yooe, Lun You, Ah Krun, Lin Yow, Tie Krun, Hee Choy.

To the Hon. W. T. Wallace, ch'f justice of the supreme court of the State of California.

The petition of Ah Coo respectfully shows: That Ah Fook, Shee

Mowy, Ah Fung, Ah Qui, Ah Lin, Tie Hee, Lin Choy, Ah Mowy, Ah Hoe, Ah Kee, Wong Choy, Ah Tuck, Lin Ying, Ah King, Ah Tuck, Yung Hee, Ah Kue, Yung You, Lun You, Ah Krun, Kee Choy, Lin Yow, & Tie Krun, certain Chinese females, are unlawfully im-
161 prisoned, detained, confined, and restrained of their liberty by Captain Freeman, of steamer Japan, and R. P. Pitrowski, commissioner of emigration at, and Wm. McKibben, sheriff of, city and county of San Francisco, in the city & co. of San Francisco, State of California.

That the said imprisonment, detention, confinement, and restraint are illegal; and that the illegality thereof consists in this, to wit:

That said women are natives of the empire of China, and arrived in this State on the steamship "Japan" on the day of August, 1874, as voluntary emigrants, and have been prevented from landing in the State by the master of said steamship, and the State commissioner of emigration, under pretence that they are lewd, abandoned, & debauched, and under pretense of authority of the laws of this State; whereas they are not lewd, abandoned, or debauched, but persons of good character, seeking in good faith to reside in this State; *are*
162 by the laws of the United States and treaties thereof with the Empire of China are entitled and guaranteed the right to land and reside in this State.

And your petitioner further shows that the reasons this application is originally made to this court are, that an application for the discharge of these parties has already been denied by the judge of the 4th district court, and the parties are about to be immediately returned to China against their will and consent; that the questions of law inolved upon said application raised grave doubts as to the constitutionality & validity of the laws under which they are held and have been remanded; that numbers of similar women arrive here every month, and the same questions will arise upon each of such occasions upon like applications for their discharge, and that said questions will never be *let* at rest until a decision is had upon them by this court of final resort.

And your petitioner further shows that said parties will in all
163 probability, & that there is reason to believe that they will, be carried out of the State & beyond the jurisdiction of the court before compliance with the writ of habeas corpus can be enforced.

Wherefore your petitioner prays that a writ of habeas corpus may be granted, directed to the said Capt. Freeman & R. P. Petrowski, commanding them and each of them to have the bodies of the said parties above named, so restrain*t*, before this honorable court or your honor, or a justice of the court, at a time and place therein to be specified, to do and receive what shall then and there considered according to law concerning them, together with the time and cause of their detention, and said writ; and that the said parties be restored to their liberty; and that a warrant issue commanding the sheriff of the city and county of San Francisco to take said parties, so restrained of their lib-
164 erty, into his custody, & forthwith to bring them before the court, or one of the justices thereof, to be dealt with according to law.

Dated August, 29th 1874.

AH CO.

QUINT & EGERTON,
Attys. for Petitioner.

Subscribed & sworn to before me this 29th day of August, 1874.
GRANT I. TAGGART, *Clerk.*

Let a writ and warrant issue pursuant to the prayer of the within petition, returnable before the supreme court of the State of California, at the court-room of said said court, in the city of San Francisco, on Friday the 4th day of September, 1874, at 11 o'clock a. m.

WILLIAM T. WALLACE,
Chief-Justice.

AUGUST 29TH, 1874.

(Endorsed:) State of California. In the supreme court. In the application for habeas corpus on behalf of 25 Chinese women. Petition for writ of habeas corpus. Filed August 29th, 1874. Grant I. Taggart, clerk. Quint & Egerton, atty. for petitioner. (A copy.)

165 *Habeas corpus.*

AH FOOK, SHU MOWY, AH TUNG, AH QUI, Ah Lin, Tie Hee, Lin Choy, Ah Mowy, Ah Hoe, Ah Kee, Wong Choy, Ah Tuck, Low Ying, Ah Ring, Ah Suck, Yung Hee, Ah Kee, Yung Yow, Sun Yew, Ah Krun, Lin Yow, Tie Krun, Hee Choy.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

In the supreme court of the State of California.

The people of the State of California to Capt. Freeman, of steamer Japan, R. P. Petrowski, commissioner of immigration, and Wm. McKibben, sheriff city & co. San Francisco, greeting:

We command you that you have the body of the persons whose names appear on the annexed, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and de-
166 tention, by whatsoever name said parties shall be called or charged, before the hon. the supreme court in the city & co. of San Francisco, at the court-room thereof, on the 4th day of September, A. D. 1874, at 11 o'clock a. m. of that day, to do and receive what shall then and there be considered concerning the said-named parties. And have you then and there this writ.

By order of Hon. W. T. Wallace, C. J.

Witness the Hon. W. T. Wallace, chief-justice of the supreme court aforesaid, with the seal thereof hereto affixed, this 29th day of August, A. D. 1874.

Attest:

[SEAL.] GRANT I. TAGGART, *Clerk.*

(Endorsed:) No. 10114. Supreme court of California. The People of the State of California vs. Capt. Jno. H. Freeman, of steamer Japan. Writ of habeas corpus. Filed September 4th, 1874. Grant I. Taggart, clerk. (Copy.)

Thereby certify that I received the within writ on the 29th day of August, 1874, and made personal service of the same upon Capt.
167 Jno. H. Freeman, master of the steamship Japan, on board of said vessel, on the 29th day of August, 1874, at 12 o'clock merid-

ian, by delivering to the said Capt. Jno. H. Freeman a copy of said writ, and exhibiting the original to said Captain Freeman then and there, and at which time and place the within named persons, Ah Fook, Shu Mowy, Ah Tung, Ah Qui, Ah Lin, Tie Hee, Lin Choy, Ah Mowy, Ah Hoe, Ah Kee, Yung Choy, A Duck, Lon Yung, Ah Ring, Ah Suck, Yung Hee, Ah Kee, Yung Gow, San Gow, Ah Krun, Sin You, Tie Krun, Hee Chy, will

J. R. RICE, *Coroner.*

STATE OF CALIFORNIA,
City and County of San Francisco:

In the supreme court.

The State of California and coroner of the city and county of San Francisco, greeting:

A petition for a writ of habeas corpus, duly certified, having been presented to this court and filed, from which it appears that Ah
168 Fook, Shu Mowy, Ah Fung, Ah Qui, Ah Lin, Tie Hee, Lin Choy, Ah Mowy, Ah Hoe, Ah Kee, Wong Choy, Ah Tuck, Low Ying, Ah Ring, Ah Suck, Yung Hee, Ah Kue, Yung Yow, San Yow, Ah Kum, Lin Yow, Tie Kum, Hee Choy, all Chinese women, between the ages of fifteen & twenty-five years, are illegally held in custody, confinement, and restraint by Wm. McK. Freeman and R. P. Piotrowski, & Wm. McKibben, sheriff of the city and county of San Francisco, at the city & county of San Francisco, California, on this way to the steamer Japan, and that there is reason to believe that the aforementioned Chinese women will be carried out of this State and beyond the jurisdiction of the court before compliance with the writ of habeas corpus can be enforced:

Wherefore we command you to take the aforementioned Chinese women into your custody and forthwith to bring them before this court to be dealt with according to law.

169 By order of Hon. Wm. T. Wallace, chief-justice.

Witness Hon. W. T. Wallace, chief-justice of the supreme court of the State of California, and the seal of said court.

Attest:

GRANT I. TAGGART,
Clerk Supreme Court.

(Endorsed:) State of California. In the supreme court. In the application for habeas corpus on behalf of 25 Chinese women. Warrant of arrest. Filed Sept. , 1874. (A copy.)

Supreme court of the State of California.

EX PARTIE AH FOOK AND 22 OTHER CHINESE women *on* HABEAS CORPUS. } No. 10114.

The people of the State of California send greeting to O. Gilison, I. M. Condit, Barzin E. Z. Simmons, Tam Sing, Fung Noy, Tan See, 743 Sacramento st.:

170 We command you that, all and singular business and excuse being set aside, you appear and attend upon the supreme court

of the State of California, before the justices thereof, at the court-room of said court in the city and county of San Francisco, on the 4th day of September, 1874, at 11 o'clock a. m., then and there to testify in the above cause now pending in said supreme court on the part of the people of the State of California, and for failure to attend you will be deemed guilty of a contempt of court and liable to pay all losses and damages sustained thereby by the parties aggrieved, and forf'it one hundred dollars in addition thereto.

Witness Hon. W. T. Wallace, chief-justice of the supreme court of the State of California, this 3rd day of September, A. D. 1874.

Attest:

GRANT I. TAGGART, *Clerk.*

171 I hereby certify that I received this subpœna on the 3rd day of September, 1874, at 2 o'clock p. m., and made due service thereof on O. Gilison, I. M. Condit, E. Z. Simmons, Barzin, Fung Noy, Lee Chuck, Tam Ching, and Tan Lee by informing them of the contents of the within subpœna.

T. D. McKENNA,
Policeman.

(Endorsed:) 10114. Ex parte. Ah Fook and 22 other Chinese women, on habeas corpus. Subpœna. Filed September 4, 1874. Grant I. Taggart, clerk.

In the supreme court of the State of California.

IN THE MATTER OF THE APPLICATION OF AH COO for a writ of habeas corpus.

To the honorable the supreme court of the State of California:

In obedience to the writ of habeas corpus bearing date the
172 day of Aug., A. D. 1874, issued out of this honorable court, and addressed to J. H. Freeman, William McKibben, sheriff of the city and county of San Francisco, and to the undersigned R. K. Piotrowski, commissioner of immigration, the said R. K. Piotrowski respectfully makes return as follows:

That on the 24th day of August, A. D. 1874, he was the duly appointed and qualified commissioner of immigration for the port of San Francisco.

That on the said 24th day of August, A. D. 1874, at said city and county, in the discharge of his duties as such commissioner, he boarded the Pacific Mail Steamship Company's steamship Japan upon her arrival at said port of San Francisco from the foreign port of Hong-Kong, in the Empire of China, and examined the alien passengers on board of said steamship to satisfy himself whether any of such passengers was lunatic, idiotic, deaf, dumb, blind, crippled, or infirm, and was
173 not accompanied by relatives able and willing to support him, or was likely to become permanently a public charge, or had been a pauper in any other country, or was from sickness or disease, existing either at the time of sailing from the port of departure or at the time of his arrival in this State, a public charge or likely soon to become so, or was a convicted criminal or a lewd or debauched woman.

That, as a result of such examination, he, the said commissioner as aforesaid, became satisfied that there were on board of said steamship

twenty-two alien passengers coming from the said foreign port of Hong-Kong who were lewd or debauched women.

That immediately thereupon he, the said commissioner as aforesaid, served upon the commander of said ship a notice of which the following is a copy:

"To the commander of the steamer Japan, from Hong-Kong.

174 "SIR: You are hereby notified that there are on board the ship commanded by you the following-named passengers from ports out of the United States who belong to the class or possess the infirmatives or vices specified in sec. 2959 of the political code, viz:

(Names appended hereto.)

"And that you (or the owners or consignees of your vessel) are required to either give the bond required by said section 2952 of the political code for each of such passengers, or to retain them on board of your vessel until said vessel shall leave this port, and then convey said passengers from this State.

(Signed) "R. KORWIN PIOTROWSKI,
"*Com'r of Immigration.*

"SAN FRANCISCO, *August* 24, 1874.

"	Names.	Age.
"	1. Ah Sop	20
"	2. Ah Fung	20
"	3. Ah Hoo	22
"	4. Hee Choi	18
"	5. Dy Kum	19
"	6. Choi Fung	19
	" 7. Ling Choi	19
175	"8. Ah Lin	19
	"9. Sou Yung	20
"10.	Soni Hui	21
"11.	Tun You	21
"12.	Ah Fok	28
"13.	Ah Mui	18
"14.	Lung Choi	20
"15.	Ah Ku	18
"16.	Ah Os	19
"17.	Yun Ha	17
"18.	Ah Duck	20
"19.	Ah Kunor	17
"20.	Hong Choi	20
"21.	Chin Lo	22
"22.	Dy Ha	17"

That respondent is informed and believes that the persons for whom the said writ was issued are the indentical persons described in said notice, so as above recited, served on the commander of said steamship Japan.

R. KORWIN PIOTROWSKI,
Commissioner of Immigration.

SAN FRANCISCO, *September* 4, 1874.

176 (Endorsed:) 10114. In the supreme court of State of California. In the matter of the application of Ah Coo for a writ of

habeas corpus. Return of the commissioner of immigration. Filed September 7, 1874. Grant I. Taggart, clerk. (Copy.)

In the supreme court of the State of California.

IN THE MATTER OF THE APPLICATION OF AH Coo for a writ of habeas corpus.

To the honorable the supreme court of the State of California:

In obedience to the writ of habeas corpus bearing date the day of A. D. 1874, issued out of this honorable court, and addressed to William McKibben, sheriff of the city and county of San Francisco, State of California, R. K. Piotrowski, commissioner of immigration, and the undersigned, J. H. Freeman, he, said J. H. Freeman, respectfully makes return to said writ, as follows:

That on the 25th day of July, 1874, at the port of Hong-Kong, in
177 the Empire of China, he was a citizen of the United States, duly qualified, appointed, and acting as master of the American steamship Japan, whereof the Pacific Mail Steamship , a corporation duly organized and acting under the laws of the State of New York, was owner, which steamship was, during all the time herein mentioned, duly registered in the office of the United States collector of customs of the port of New York, in the State of NewYork; that previous to the times herein mentioned, and during all the times herein mentioned, said steamship was and still is engaged in the business of a common carrier of freight and passengers, plying between said port of Hong-Kong, in the Empire of China, the port of Yokahama, in the Empire of Japan, and the port of San Francisco, in said State of California; that upon the day and year hereinbefore stated, to wit, on the 25th day of July, A. D. 1874, or shortly prior thereto, while the undersigned was, as master thereof, so in command
178 of said steamship Japan, then lying in said port of Hong-Kong, bound upon a voyage from said last-named port to the port of San Francisco aforesaid, via said port of Yokahama, the persons whose names are set forth in said writ, having each respectively first duly obtained from the United States consul at said port the certificate provided for and required by the fourth section of that certain act of Congress of the United States entitled an act to prohibit the coolie trade "by American citizens in American vessels," passed February 19th, 1862, and the several acts of Congress amendatory thereof and supplementary thereto, and having each of them respectively in all respects complied with the provisions of said several acts of Congress, they and every of them did, on said 25th day of July, A. D. 1874, come on board of said steamship Japan, at said port of Hong-Kong, as passengers for-
said port of San Francisco, upon the then intended voyage of said
179 Japan from said port of Hong Kong to said port of San Francisco, and they and each of them did then and there pay or cause to be paid their respective fares for their several and respective passages upon said Japan upon her aforesaid voyage; that they and each of them were then and there natives and subjects of said Empire of China, and were not, nor was any of them, married, paupers, criminals, or vagabonds, or lewd or debauched or abandoned women, so far as the undersigned knew; and thereupon, as such master of said steamship Japan, this respondent did carry and transport said persons as passengers on board of said steamship Japan from said port of Hong-Kong, via said port of Yokahama, to said port of San Francisco, where

she arrived on August 24th, 1874; that immediately upon the arrival of said steamship Japan at said port of San Francisco, as last aforesaid, R. K. Piotrowski, commissioner of immigration in and for the city and county of San Francisco, being the same person named in said
180 writ, did board said steamship, and then and there, as such commissioner, claimed and insisted, under section twenty-nine hundred and fifty and twenty-nine hundred and fifty-two of the political code of the State of California, as amended and approved March 30th, 1874, upon the right to examine the persons in said writ alleged to be unlawfully restrained of their liberty, all of whom were women; and thereupon said commissioner of immigration did examine them and each of them, as respondent is informed and verily believes; and upon such examination said commissioner of emigration did declare that they and each of them were lewd, debauched, and abandoned women, and did refuse to permit them or any of them to land at said port of San Francisco; that the aforesaid refusal of said commissioner of immigration to permit said persons and every or any of them to land at said port of San Francisco constitutes the unlawful restraint of their liberty in said writ mentioned; that personally this respondent
181 has not at any time, and does not now, restrain or claim the right to restrain them or any of them; and he is advised and verily believes, and upon such information and belief charges, that the aforesaid provisions of said political code of California, in so far as the same in any manner assume to warrant the refusal to allow said persons to land at said port of San Francisco, are, and every of them is, repugnant to and in conflict with the Constitution of the United States and the provisions of that certain treaty entitled "Additional articles to the treaty between the United States and China of June 18th, 1858, and concluded on July 27th, 1868," between the United States and the Empire of China.

J. H. FREEMAN.
By McALLISTER & W. BERGIN,
His Attorneys.

Filed September 4th, 1874. Grant I. Taggart, clerk. (Copy.)

182 In the supreme court of the State of California, in and for the city and county of San Francisco.

EX PARTE AH FOOK AND TWENTY-TWO CHINESE women, on habeas corpus. } 10114.

It is hereby ordered and adjudged that the coroner of the city and county of San Francisco *reward* and deliver to J. H. Freeman, the master of the steamship Japan, on board of said steamship, in the port of San Francisco, or to the owners of said steamship, the Pacifi' Mail Steamship Company, on board of said steamship, in the port of San Francisco, or to the consignees of said steamship at the port of San Francisco, and on board of said steamship, the persons named in said writ, to wit, twenty-two Chinese women in your possession, namely:
Ah Sop, Ah Fung, Ah Hoo, Hee Choi, Dy Kum, Choi Tung,
183 Ling Choi, Ah Lin, Lou Yung, Sam Hin, You You, Ah Fok, Ah Mui, Lung Choi, Ah Kee, Ah Oy, Yun Ha, Ah Duck, Ah Kum, Hong Choi, Chin Lo, Dy Ha, and that the said master and owners and consignees are hereby required to retain such persons on board of said vessel, namely, the said steamship Japan, until the said vessel

shall leave this port, and then convey said persons and passengers, and each of them, from and out of this State. And in case said steamship Japan be not now in the port of San Francisco, then it is hereby ordered that said coroner retain the said above-named persons and passengers in his possession until the said steamship arrives, (at which time said coroner is hereby ordered to carry out and enforce this order,) or until the further order of the court.

WALLACE, *C. J.*
McKINSTRY, *J.*
CROCKETT, *J.*

184 (Endorsed:) 10114. Supreme court of State of California. Ex-parte Ah Fook, and twenty-two Chinese women on habeas corpus. Filed Sept. 8th, 1874. Grant I. Taggart, clerk. By Allen Tillinghast, deputy. (Copy.)

Supreme court State of California.

STATE OF CALIFORNIA,
City and County San Francisco:

I, Grant I. Taggart, clerk of the supreme court of the State of California, do hereby certify the annexed and foregoing to be the original writ of error, the original citation, also full, true, and correct copies of the bond, petition for writ of habeas corpus, with order for writ to issue, writ of habeas corpus, with evidence of service thereof, warrant of arrest, subpœna with return thereto, [return of the commissioner of immigration, return of J. H. Freeman, and the opinion and judgment of
185 the court in the case of Chy Lung and twenty-two Chinese women on habeas corpus, all of which fully appears by the files and records of my office.

In witness whereof I hereunto set my hand and affix the seal of the said supreme court at San Francisco, this 5th day of November, A. D. 1874.

[SEAL.] GRANT I. TAGGART, *Clerk.*

Emigration officers' certificate.

I hereby authorize the Chinese passenger-ship Japan ss. to proceed to sea for the port of San Francisco, in California, U. S. A., and I certify that the said ship can legally carry 1,430 adults, and that there are on board 589 passengers, making in all 587 adults, viz, 496 men, 89 women, 1 male child*ren*, and 3 female children, such children being between
186 the ages of one and twelve years; that the space set apart and to be kept clear for the use of such emigrants is as follows: On the upper deck 12,009 superficial feet being for exercise, and in the between deck and hospital 17,160 superficial feet being for berths; that the ship is properly manned and fitted, and that the means of ventilating the part of the between decks appropriated to passengers are as follows: wind sails, ventilators, and hatch-ways; that the ship is furnished with a proper quantity of good provisions, fuel, and water for 44 days. Issues to the passengers according to the annexed dietary scale, and with a proper quantity of medicines, instruments, and medical comforts according to the annexed scale of medical necessaries; * that no fraud appears to have been practiced in collecting the emigrants, and that there are on board a surgeon and interpreter approved by me, and designated respectively.

, *Surgeon.*
, *Interpreter.*

AH HEN.

187 The master of the ship is to put into Yokahama for water, coals, and fresh vegetables.* To the best of my belief none of these emigrants are under any contract of service whatever.

EMIGRATION OFFICER SEAL. HONG KONG.

A. J. THORNSETT,
Emigration Officer.

Dated at Hong-Kong this 25th day of July, 1874.

NOTE.—This ship is provided with 12 life-boats.

Attached to this certificate are—
1. Passengers' list, as supplied by ship-master.
2. Schedule A of the Chinese passengers' act, 1855.
3. Port clearance.

I, Grant I. Taggart, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of emigration officers' certificate, the original thereof
188 being now on file in my office, as shown by the records of my office.

Witness my hand and the seal of the court this 5th day of November, A. D. 1874.

[SEAL.]

GRANT I. TAGGART,
Clerk Clerk *Supreme Court State of California.*

Supreme Court of the United States.

CHY LUNG
vs.
J. H. FREEMAN, R. K. PIOTROWSKI, WM. McKibben.

It is stipulated that the within is a correct copy of the certificate of the emigration officer at Hong Kong, China, introduced as evidence upon the hearing of the above-entitled cause.

ESTEE & BOALT,
Attys. for R. K. Piotrowski, Comr. of Immigration.
E. C. BANFIELD,
Atty. for J. H. Freeman.

(Endorsed:) Certified copy of emigration officer's certificate.

189 (Duplicate.)

CONSULATE OF THE UNITED STATES OF AMERICA AT HONG KONG.

I, the undersigned consul of the United States for the Island of Hong-Kong and the dependencies thereof, do hereby certify that the within-named persons, being inhabitants and subjects of China to the number of *589, are each and all of them free and voluntary emigrants, going hence to San Francisco, in the United States of America, on board the steamship Japan, of New York; and that I am personally satisfied, by evidence produced, of the truth of the facts herein mentioned.

Done in conformity with the provisions of the act of Congress, entitled "An act to prohibit the coolie trade by American citizens in American vessels," approved February 19th, 1862.

Given under my hand and the seal of this consulate this day of A. D. 187 .

{ UNITED STATES CONSULATE SEAL. HONG KONG. }

H. KEDING LORING,
United States Consul.

*495 males,
94 females,

589

190 I, Grant I. Taggart, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the certificate of the United States consul at Hong-Kong, China, the duplicate thereof being now on file in my office, as shown by the records of my office.

Witness my hand and the seal of the court this 5th day of November, A. D. 1874.

[SEAL.]

GRANT I. TAGGART,
Clerk Clerk *of the Supreme Court, State of California.*

Supreme Court of the United States.

CHY LUNG
vs.
J. H. FREEMAN, R. K. PIOTROWSKI, WM. McKIBBEN.

It is stipulated that the within is a correct copy of the consular certificate, referred to in the return of Captain J. H. Freeman in
191 above-entitled proceeding, and introduced as evidence upon the hearing.

ESTEE & BOALT,
Attys. for R. K. Piotrowski, Comr. of Immigration.
E. C. BANFIELD,
Atty. for J. H. Freeman.

(Endorsed:) Certified copy of certificate of the United States consul at Hong-Kong.

(Indorsement on cover:) No. 478. Chy Lung, plaintiff in error, vs. J. H. Freeman, R. K. Piotrowski, commissioner of immigration, and William McKibben, sheriff of the city and county of San Francisco, Cal. California sup. court. Filed 8th January, 1875.

Supreme Court of the United States.

No. 478.

CHY LUNG, PLAINTIFF IN ERROR,

vs.

J. H. FREEMAN, R. K. PIOTROWSKI, Commissioner of Immigration, and WILLIAM McKIBBEN, Sheriff of the city and county of San Francisco, Cal.

BRIEF
FOR PLAINTIFF IN ERROR.

EDWARDS PIERREPONT,
Of Counsel for Plaintiff.

Judd & Detweiler, Prs., Washington, D. C.

Given under my hand and the seal of this consulate this day of A. D. 187 .

{ UNITED STATES CONSULATE SEAL. HONG KONG. }

H. KEDING LORING,
United States Consul.

*495 males,
94 females,

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Witness my hand and the seal of the court this 5th day of November, A. D. 1874.

[SEAL.]

GRANT I. TAGGART,
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BRIEF

FOR PLAINTIFF IN ERROR.

EDWARDS PIERREPONT,

Of Counsel for Plaintiff.

Judd & Detweiler, Prs., Washington, D. C.

Supreme Court of the United States.

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J. H. FREEMAN, R. K. PIOTROWSKI, Commissioner of Immigration, and WILLIAM McKIBBEN, Sheriff of the city and county of San Francisco, Cal.

BRIEF

FOR PLAINTIFF IN ERROR.

EDWARDS PIERREPONT,
Of Counsel for Plaintiff.

STATEMENT.

This cause comes up on writ of error from the supreme court of California. The error alleged is in the court below deciding that the statute under which the plaintiff is imprisoned is valid, and her detention lawful.

The California Statute, section 2,952, Amended Code, requires the Commissioner of Immigration "to satisfy himself whether or not any passenger who shall arrive in this State by vessels from any foreign port or place (who is not a citizen of the United States,) is lunatic, idiotic, deaf, dumb, blind, crippled or infirm, and is not accompanied by rela-

tives who are able and willing to support him, or is likely to become permanently a public charge, or has been a pauper in any other country, or is, from sickness or disease, existing either at the time of sailing from the port of departure, or at the time of his arrival in this State, a public charge, or likely to become so, or is a convicted criminal, or a lewd or debauched woman;" and then declares that "no person who shall belong to either class, or who possesses any of the infirmities or vices specified herein, shall be permitted to land in this State, unless the master, owner or consignee of said vessel shall give a joint and several bond to the people of the State of California, in the penal sum of five hundred dollars, in gold coin of the United States, conditioned to indemnify and save harmless every county, city and county, town and city of this State, against all costs and expenses which may be by them necessarily incurred for the relief, support, medical care, or any expense whatever, resulting from the infirmities or vices herein referred to, of the persons named in said bonds, within two years from the date of said bonds; - - - and if the master, owner or consignee of said vessel shall fail or refuse to execute the bond herein required to be executed, they are required to retain such persons on board of said vessel until said vessel shall leave the port, and then convey said passengers from this State; and if said master, owner or consignee shall fail or refuse to perform the duty and service last herein enjoined, or shall permit said passengers to escape from said vessel and land in this State, they shall forfeit to the State the sum of five hundred dollars, in gold coin of the United States, for each passenger so escaped, to be recovered by suit at law."

About the 24th of August, 1874, the steamer *Japan*, one of the ships of the Pacific Mail line, arrived from Hong Kong at the port of San Francisco with 22 Chinese passenger women on board, of which number the plaintiff was one. The commissioner immediately served the following notice:

To the Commander of the Steamer Japan from Hong-Kong:

SIR: You are hereby notified that there are on board the ship commanded by you the following-named passengers from ports out of the United States who belong to the class or possess the infirmatives or vices specified in sec. 2959 of the political code, viz:

(Names appended hereto.)

And that you, (or the owners or consignees of your vessel,) are required to either give the bond required by said section 2952 of the political code, for each of such passengers, or to retain them on board of your vessel until said vessel shall leave this port, and then convey said passengers from this State.

(Signed) R. KORWIN PIOTROWSKI,
Com'r of Immigration.

These passengers were brought before the court upon *habeas corpus*, and after hearing, the following order was made:

Ex parte Ah Fook and twenty-two Chinese Women, on habeas corpus.

It is hereby ordered and adjudged that the coroner of the city and county of San Francisco *reward* and deliver to J. H. Freeman, the master of the steamship Japan, on board of said steamship, in the port of San Francisco, or to the owners of said steamship, the Pacific Mail Steamship Company, on board of said steamship, in the port of San Francisco, or to the consignees of said steamship at the port of San Francisco, and on board of said steamship, the persons named in said writ, to wit, twenty-two Chinese women in your possession, namely: * * * * And that the said

master and owners and consignees are hereby required to retain such persons on board of said vessel, namely, the said steamship Japan, until the said vessel shall leave this port, and then convey said persons and passengers, and each of them, from and out of this State. And in case said steamship Japan be not now in the port of San Francisco, then it is hereby ordered that said coroner retain the said above-named persons and passengers in his possession until the said steamship arrives, (at which time said coroner is hereby ordered to carry out and enforce this order,) or until the further order of the court.

WALLACE, *C. J.*
MCKINSTRY, *J.*
CROCKETT, *J.*

Most of these women were afterwards discharged by Mr. J ustice Field, but the plaintiff in error was held, as I under stand, for the purpose of testing the California statute before this Court.

FIRST.

The courts of the United States have jurisdiction in this case. The plaintiff is an alien, the subject of a foreign government, having treaty relations with the Government of the United States, and she has a right to invoke the aid of the Federal tribunals whenever her privileges, guaranteed by treaty, or the Constitution, or the laws of Congress, are invaded.

SECOND.

The statute above cited is void. Under its provisions the Commissioners of Immigration of California are bound to prevent the landing of any passenger who shall arrive in the State by *vessel* from any port in Great Britain, Ger-

many, France, or China, (if such passenger is not a citizen of the United States,) though the person be ever so rich or exalted in character, rank, or station, and though accompanied by a retinue of servants; if he happens to be "infirm" in health, or "crippled" in his limbs, or "deaf" in his hearing, when he arrives, unless "accompanied by RELATIVES who are able and willing to support him," or if at any time he "has been a pauper," no matter how many millions the once pauper may possess at the time of arrival in port, or if the passenger "is a convicted criminal," though his crime may have been the political offense of trying to aid his countrymen in establishing a constitutional government; or if the passenger is a woman and is "lewd," although she may never have known sexual intercourse, or if she is "*debauched*," either by drunkenness or gluttony, or political intrigues, or in any other way, UNLESS the prescribed bonds are given.

An English nobleman of great riches and renown, but "crippled" in the Crimean war, accompanied by a Prussian prince, "infirm" from wounds received at the battle of Sadowa, arrives at San Francisco in the steamer *Japan;* under this statute they cannot be permitted to land. In their suite is an English diplomat and his wife, together with a French actor and his wife. The Commissioner of Immigration is "satisfied" that one of the women is lewd, that the other is debauched, and he takes the precise course with them that he took with the plaintiff in error in this case. It can hardly be doubted that the English woman and the French woman would be released from imprisonment. But under our Constitution, our laws, and our treaty with China, the plaintiff has precisely the same rights

as an English, French, or German woman enjoys on a visit to California.

It will hardly be claimed that the statute of California which prevents a French gentleman, a German prince and an English noble from landing at San Francisco on their voyage around the world, because one is "crippled," one "infirm," and one "deaf," can be adjudged valid. But it is claimed that the part of the statute aimed at "lewd" women and "debauched" women is within the power of the State to enforce.

Words used in statutes are generally supposed to convey their ordinary meaning. Whatever criticisms may be made upon Webster, his dictionary in definitions is conceded to surpass every other. He defines "*lewd*" thus:

1. Not clerical; pertaining to or characterizing the laity; laic, laical, hence unlearned; ignorant; foolish; simple. [Obs.]

> "Yea, blessed be alway a *lewed* man
> That naught but only his beleve can."—*Chaucer.*

"The almightiness of God standeth not in that he is able to do all that our foolish, *lewd* thoughts may imagine."—*Tyndale.*

2. Contemptible; vile; despicable; profligate; dissolute. [Rare.]

"But the Jews, who believed not . . . took unto them certain *lewd* fellows of the baser sort . . . and assaulted the house of Jason."—*Acts* xvii, 5.

"Great numbers of men were trained up in an idle and dissolute way of life . . . and then, if not ashamed to beg, too *lewd* to work, and ready for any kind of mischief."—*Southey.*

3. Given to the unlawful indulgence of lust; dissolute; lustful; filthy.

4. Proceeding from unlawful lust; as lewd actions.

Hence, under this statute, a German, French, English or Irish girl coming "by vessel" to California can be excluded from landing, though chaste as the Virgin and devout as St. Ursula,

There is no evidence in the record that the plaintiff was ever "*lewd*" or ever "*debauched*," unless it is *lewd* to be *unlearned* or of the humbler class.

THIRD.

To the General Government many exclusive powers are granted, and any acts of the several States in contravention of such authority are void.

Among those exclusive powers confided to the Federal Government are the following:

The power to regulate commerce with foreign nations.

The power to regulate the intercourse of foreign people with our own.

The power to prescribe the conditions of migration or importation of persons, and the laws of naturalization.

The power to declare war.

The power to make treaties with other nations.

Constitution, Art. 1, Secs. 8, 9, and 10.

The Passenger Cases, 7 Howard, 462, 412.

Under our treaty with Great Britain her subjects may come "freely and securely" to our ports for curiosity or

business, and enjoy complete protection under the laws, and no one is excluded because a commissioner of immigration is "satisfied" that he or she is "*lewd.*" A subject of China has the same right.

"By the 5th Article of the Treaty between the United States and China, adopted on the 28th of July, 1868, the United States and the Emperor of China recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to another, for purposes of curiosity, of trade, or as permanent residents. The 6th Article declares that citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities or exemptions in respect to travel or residence as may there be enjoyed by citizens or subjects of the most favored nation. And, reciprocally, that Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to travel or residence as may there be enjoyed by citizens or subjects of the most favored nation."

FOURTH.

But the right to exclude the Chinese women from landing at ports of the United States in California is claimed under what is called the "*Police power of the State.*"

The *ballet* and other theatrical exhibitions are prohibited in several of the States; but if a French ballet-dancer or French actress should desire to visit all those States she could not be prevented from landing at the ports by any State statute, on the ground that the law was made under the "police power of the State." Such law would be inconsistent with our treaty with France; contrary to the well-established principles of commercial intercourse, and void. If the dancer or the actress violated the laws of the

State after landing, the State could prosecute the offender. Under our treaty the same rule applies to a Chinese woman as to a French one, and renders the detention of the plaintiff in prison clearly unlawful.

There was a time in our history when eminent judges of this Court asserted the right of a State to exclude from its limits any person whom it might deem injurious to the interests of its people, and Chief Justice Taney, in his dissenting opinion in the "Passenger Cases," maintained this right. (7 Howard, 465.) But that was during the reign of Slavery, when the doctrine of State rights was pushed to its mad extreme in order to exclude free negroes and believers in freedom from the Slave States. Those days of frantic efforts to establish wrongs have passed away, and no Federal court would now tolerate such views.

The "police power of a State" is limited; it may be invoked by a State in self-defense and for the preservation of its citizens, but the power must be confined within reasonable limits—it is not to be exercised whimsically, without reason, and contrary to the well-established principles which govern the intercourse of nations, and it cannot be invoked to contravene the lawful authority of the Federal Government.

If California becomes a Mormon State, and her Legislature fancies that the safety and welfare of the community demands that all whom they call "Gentiles" should be excluded from her ports, laws to accomplish that end would be void, and the sincerity of the conviction that the safety of the State demanded such exclusion would not help the laws.

Under the "Police Power" very many things may be

done for the safety of the State; but laws, the result of caprice, bigotry or unreasonable apprehension, and which tend to endanger the peace of the nation with foreign powers touch the domain of Federal authority, and come under the supervision of the Federal courts. A single State of this Union is not the sole judge of what laws may be passed for its own security, if the execution of those laws effect our treaty relations. The right of self-defense is conceded to every State, but, as Mr. Justice Grier says, in the *Passenger Cases:*

"The powers used for self-defense and protection against harm cannot be perverted into weapons of offense and aggression upon the rights of others."
7 Howard, 463, 464.

Every *individual* has the right of self-defense; in the exercise of that right he may do great bodily harm to his enemy, or even kill him, but he is not the sole judge of what he may do for his own safety. His acts must be *reasonable*, under the circumstances, and not prompted alone by cowardly fears or groundless suspicions.

FIFTH.

In the 14th amendment of the Constitution is the following:

SEC. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction *the equal protection of the laws.*

Under this amendment *every person*, whether native or *foreign*, is entitled to *egual protection* of our laws. Persons or classes who are not equally exempt from *burdens*, have not "*the equal protection of the laws.*"

Quite in harmony with this amendment is the act of Congress passed May 31, 1870. "No tax or charge," says the act, "shall be imposed or enforced by any State upon any person immigrating thereto from a foreign country which is not equally imposed or enforced upon every person immigrating to such State from any other foreign country, and any law of any State in conflict with this provision is hereby declared null and void."

16 Statutes at Large, 144.

The "CHARGE" imposed by the statute on a Chinese woman arriving in a vessel from Hong-Kong amounts to exclusion of the immigrant or visitor; while a Mexican woman of the same class arriving by rail, stage-coach, or carriage from Mexico, is exempt from *any charge;* and thus a distinction is made by the California statute in conflict with the laws of Congress.

The very elaborate opinion of Mr. Justice Field, delivered when the other Chinese women were discharged, is so far superior to anything which I can add, that I close my argument by handing printed copies of the opinion to the Court.

EDWARDS PIERREPONT,
Of Counsel for the Plaintiff in Error.

In the Matter
of
AH FONG.

OPINION OF MR. JUSTICE FIELD.

The petitioner alleges that she is illegally restrained of her liberty by the Coroner of the City and County of San Francisco, and asks to be discharged from such restraint. The facts of the case, as detailed in the proceedings before us, are briefly as follows: The petitioner is a subject of the Empire of China, and came to the port of San Francisco, as a passenger on board of the American steamship *Japan*, owned by the Pacific Mail Steamship Company, and under the command, as master, of J. H. Freeman. On the arrival of the steamship at this port, which was on the 24th of August last, she was boarded by the Commissioner of Immigration of California, who proceeded under the provisions of a statute of the State to examine into the character of the petitioner and other alien passengers. Upon such examination, the Commissioner found, and so declared, that the petitioner and twenty-one other persons, also subjects of the Empire of China, arriving as passengers by the same steamship, were lewd and debauched women. He thereupon prohibited the master of the steamship from

landing the women, unless he or the owner or consignee of the vessel gave the bonds required by the statute. Neither of the parties designated would consent to give the required bonds, and the women were consequently detained by the master on board of the steamship. They thereupon applied for a writ of *habeas corpus* to a District Court of the State to inquire into the cause of their detention, alleging in their petition its illegality, on the ground that the statute under which they were held was in contravention of the Treaty between the United States and the Empire of China, and in conflict with the Constitution of the United States, and denying, also, that they were either lewd or debauched women. The District Court granted the application, and heard the petitioners, and after the hearing remanded them back to the charge of the master of the steamship, holding that the statute of California was neither in violation of the Treaty or the Constitution, and that the evidence presented justified the finding of the Commissioner, that the petitioners were lewd and debauched women. The petitioners thereupon applied to the Chief Justice of the State for another writ of *habeas corpus*, alleging the illegality of their restraint, on grounds similar to those taken in the petition to the District Court, and also alleging that they were, since the order of the District Court remanding them to the custody of the master of the steamship, about to be forcibly returned to China against their will and consent. They therefore prayed that with the writ of *habeas corpus* a warrant might issue to the Sheriff of the City and County of San Francisco to take them into his custody. The Chief Justice granted the writ, returnable before the Supreme Court of the State, and at the same time issued a warrant

commanding the Coroner of the City and County to take the parties into his custody, and bring them before the Court.

Under this warrant the parties were taken into the custody of the Coroner, and in his custody they still remain. The Supreme Court sustained the ruling of the District Court, and denied the application of the parties to be discharged, holding, that the statute of the State, under which they were detained, was valid and binding under the Treaty between the United States and China and the Constitution of the United States, and that the evidence justified the finding of the Commissioner of Immigration as to the character of the women. It therefore made an order directing that the Coroner return the parties to the master or owner or consignee of the steamship *Japan*, on board of the steamship, and requiring such master, owner, or consignee to retain the parties on board of the steamship until she should leave this port, and then to carry them beyond the State.

The order further provided, that in case the steamship *Japan* was not in the port of San Francisco, the Coroner should retain the parties in his possession until the arrival in port of the steamship, and then enforce the order returning the parties to the vessel, or retain the parties until the further direction of the Court.

The petitioner is one of the women thus held by the Coroner, and she now invokes the aid of this Court to be released from her restraint, alleging, as in the other applications, that the restraint is illegal, that the statute which is supposed to authorize it is in contravention of the Treaty with China and the Constitution of the United States, and

averring that she is not within either of the classes designated in the statute. It further appears, from the special traverse to the return of the Coroner, and it is admitted by counsel, that since the judgment of the Supreme Court, the steamship *Japan* has sailed from the port of San Francisco, and will not probably return under three months, and that Freeman, has been discharged from the service of the Steamship Company, and is no longer master of the *Japan*.

The decision of the District Court, and of the Supreme Court of the State, although entitled to great respect and consideration from the acknowledged ability and learning of their Judges, is not binding upon this Court. The petitioner being an alien, and a subject of a country having treaty relations with the Government of the United States, has a right to invoke the aid of the Federal tribunals for her protection, when her rights, guaranteed by the Treaty, or the Constitution, or any law of Congress, are in any respect invaded; and is, of course, entitled to a hearing upon any allegation in proper form that her rights are thus invaded.

I proceed, therefore, to the consideration of the questions presented, notwithstanding the adjudications of the State tribunals.

The statute of the State, under which the petitioner was restrained of her liberty on board of the steamship, is found in the provisions of Chapter One, Title Seven, of the Political Code, as amended by the last Legislature. These provisions require the master of a vessel arriving at any port of this State, bringing passengers from any place out of the State, within twenty-four hours after its arrival, to make a written report under oath to the Commissioner of Immi-

gration at such port, stating, among other things, the name, place of birth, last residence, age and occupation of all passengers who are not citizens, and whether any of the passengers thus reported "are lunatic, idiotic, deaf, dumb, blind, crippled or infirm, and not accompanied by any relatives able to support them, or are lewd or abandoned women." Then follow the special provisions which have given rise to the present proceedings. They are contained in section 2,952 of the code as amended. They require the Commissioner of Immigration "to satisfy himself whether or not any passenger who shall arrive in this State by vessels from any foreign port or place, (who is not a citizen of the United States,) is lunatic, idiotic, deaf, dumb, blind, crippled, or infirm, and is not accompanied by relatives who are able and willing to support him, or is likely to become permanently a public charge, or has been a pauper in any other country, or is, from sickness or disease, existing either at the time of sailing from the port of departure, or at the time of his arrival in this State, a public charge, or likely to become so, or is a convicted criminal, or a lewd and debauched woman;" and then declare that "no person who shall belong to either class, or who possesses any of the infirmities or vices specified herein, shall be permitted to land in this State, unless the master, owner, or consignee of said vessel shall give a joint and several bond to the people of the State of California, in the penal sum of five hundred dollars, in gold coin of the United States, conditioned to indemnify and save harmless every county, city and county, town and city of this State, against all costs and expenses which may be by them necessarily incurred for the relief, support, medical care, or any expense whatever,

resulting from the infirmities or vices herein referred to, of the persons named in said bonds, within two years from the date of said bonds; . . . and if the master, owner, or consignee of said vessel shall fail or refuse to execute the bond herein required to be executed, they are required to retain such persons on board of said vessel until said vessel shall leave the port, and then convey said passengers from this State; and if said master, owner, or consignee shall fail or refuse to perform the duty and service last herein enjoined, or shall permit said passengers to escape from said vessel and land in this State, they shall forfeit to the State the sum of five hundred dollars, in gold coin of the United States, for each passenger so escaped, to be recovered by suit at law."

The provisions of this section are of a very extraordinary character. They make no distinction between the deaf, the dumb, the blind, the crippled, and the infirm, who are poor and dependent, and those who are able to support themselves and are in possession of wealth and all its appliances. If they are not accompanied by relatives, both able and willing to support them, they are prohibited from landing within the State, unless a specified bond is given, not by them or such competent sureties as they may obtain, but by the owner, master, or consignee of the vessel. Neither do the provisions of the statute make any distinction between a present pauper, and one who has been a pauper but has ceased to be such. If the emigrant has ever been within that unfortunate class, notwithstanding he may have at the time ample means at his command, he must obtain the designated bond or be excluded from the State. They subject also to the same condition, and possible exclusion, the

passenger whose sickness or disease has been contracted on the passage, as well as the passenger who was sick or diseased on his departure from the foreign port. It matters not that the sickness may have been produced by exertions for the safety of the ship or passengers, or by attentions to their wants or health. If he is likely on his arrival to become a public charge, he must obtain the bond designated, or be denied a landing within the State. Nor does the statute make any distinction between the criminal convicted for a misdemeanor, or a felony, or for an offence *malum in se*, or one political in its character. The condemned patriot, escaping from his prison and fleeing to our shores, stands under the law upon the same footing with the common felon who is a fugitive from justice. Nor is there any difference made between the woman whose lewdness consists in private unlawful indulgence, and the woman who publicly prostitutes her person for hire, or between the woman debauched by intemperance in food or drink, or debauched by the loss of her chastity.

The statute is sweeping in its terms, confounding by general designation persons widely variant in character. If it can be sustained as the exercise of the police power of the State as to any persons brought within any of the classes designated, it must be sustained as to all the persons of such class. That is to say, if it can be sustained when applied to the infirm, who is poor and dependent, when unaccompanied by his relatives, able and willing to support him, it must be sustained when applied to the infirm, who is surrounded by wealth and its attendants, if he is thus unaccompanied. If it can be sustained when applied to a woman whose debauchery consists in the prostitution of her person,

it must be sustained when applied to a woman whose debauchery consists in her intemperance in food and drink; and even when applied to the repentant Magdalen, who has once yielded to temptation and lost her virtue. The Commissioner of Immigration is not empowered to make any distinction between persons of the same class; and there is nothing on the face of the act which indicates that the Legislature intended that any distinction should be made.

It is undoubtedly true that the police power of the State extends to all matters relating to the internal government of the State, and the administration of its laws, which have not been surrendered to the General Government, and embraces regulations affecting the health, good order, morals, peace and safety of society. Under this power all sorts of restrictions and burdens may be imposed, having for their object the advancement of the welfare of the people of the State, and when these are not in conflict with established principles, or any constitutional prohibition, their validity cannot be questioned.

It is equally true that the police power of the State may be exercised by precautionary measures against the increase of crime or pauperism, or the spread of infectious diseases from persons coming from other countries; that the State may entirely exclude convicts, lepers, and persons afflicted with incurable disease; may refuse admission to paupers, idiots and lunatics and others who from physical causes are likely to become a charge upon the public, until security is afforded that they will not become such a charge; and may isolate the temporarily diseased until the danger of contagion is gone. The legality of precautionary measures of this kind has never been doubted. The right of the State

in this respect has its foundation, as observed by Mr. Justice Grier in the Passenger cases, in the sacred law of self-defense, which no power granted to Congress can restrain or annul.

But the extent of the power of the State to exclude a foreigner from its territory is limited by the right in which it has its origin—the right of self-defense. Whatever, outside of the legitimate exercise of this right, affects the intercourse of foreigners with our people, their immigration to this country and residence therein is exclusively within the jurisdiction of the General Government, and is not subject to State control or interference. To that Government the treaty-making power is confided; also the power to regulate commerce with foreign nations, which includes intercourse with them as well as traffic; also the power to prescribe the conditions of migration or importation of persons, and rules of naturalization; whilst the States are forbidden to enter into any treaty, alliance, or confederation with other nations.

I am aware that the right of the State to exclude from its limits any persons whom it may deem dangerous or injurious to the interests and welfare of its citizens has been asserted by eminent Judges of the Supreme Court of the United States. Mr. Chief Justice Taney maintained the existence of this right in his dissenting opinion in the Passenger cases, and asserted that the power had been recognized in previous decisions of the Court. The language of the opinion in the case of the City of New York *vs.* Miln, (11 Peters, 141,) would seem to sustain this doctrine. But neither in the Passenger cases nor in the case of the City of New York *vs.* Miln, did the decision of the

Court require any consideration of the power of exclusion, which the State possessed; and all that was said by the eminent Judges in those cases upon that subject was argumentative, and not necessary and authoritative.*

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*The only point involved and decided in the case of the City of New York *vs.* Miln (11 Pet , 102,) was the constitutional power of the State of New York to compel the master of a vessel with passengers, arriving at her ports, from any country out of the United States, or from any other State of the United States, to report, in writing, on oath, to the State authorities, under a prescribed penalty, the name, place of birth, and last legal settlement, age and occupation of every person brought as a passenger in the vessel. This the Supreme Court held that the State, in virtue of her general police powers, had the constitutional right to do. In the course of the opinions of Mr. Justice Barbour and Mr. Justice Thompson, general language is used indicating a power in the State to exclude persons from her limits whom she might deem dangerous to the material or moral welfare of the State, but the language was wholly unnecessary to the decision of the only point then in judgment before the Court.

The facts of the two cases known as the Passenger cases (7 How., 283,) were briefly these: One of the cases (Smith *vs.* Turner) went to the Supreme Court on a writ of error from the Court of Errors of New York. The other case (Norris *vs.* The City of Boston) went to the Supreme Court of the United States from the Supreme Court of Massachusetts. The New York case arose substantially upon these facts:

A statute of that State authorized the Health Commissioner to demand and receive, and in case of neglect or refusal to pay, to sue for and recover of and from the master of every vessel arriving in the port of New York from a foreign port, for himself and each cabin passenger, one dollar and fifty cents, and from the master of each coasting vessel, for each person on board, twenty-five cents; but coasting vessels from New Jersey, Connecticut, and Rhode Island were only required to pay for one voyage in each month.

The moneys thus collected were denominated in the statute hospital moneys, and the master was authorized to sue and recover from each passenger the amount paid on his account. To the failure on the part of the master to pay, within twenty-four hours after arrival of the vessel, was attached a penalty of one hundred dollars. All moneys collected from this source, in excess of the amount necessary to defray the hospital expenses, were to be paid over to the treasurer of the Society for the Reformation of Juvenile Delinquents, in the City of New York.

Upon this statute Smith, the master of the British ship *Henry Bliss*, was sued for $295. He demurred to the complaint, on the ground that so much of the statute as authorized a recovery was repugnant to the Constitution of the United States. The demurrer was overruled in the State Courts, and electing to stand upon his demurrer, the case was taken to the Supreme Court of the United States, where the point was thus sharply presented to the Court for decision. That tribunal, after the most exhaustive and elaborate arguments upon the question, decided that the act of the Legislature of New York, in the particular case under consideration, was repugnant to the Constitution of the United States, and void, and accordingly reversed the judgment of the Court of Errors of New York.

In the case of Norris *vs.* The City of Boston, the facts were substantially

But independent of this consideration we cannot shut our eyes to the fact that much which was formerly said upon the power of the State in this respect grew out of the necessity which the Southern States, in which the institution of slavery existed, felt of excluding free negroes from their limits. As in some States negroes were citizens, the right to exclude them from the slave States could only be maintained by the assertion of a power to exclude all persons whom they might deem dangerous or injurious to their interests. But at this day no such power would be asserted, or, if asserted, allowed in any Federal Court. And the most serious consequences affecting the relations of the nation with other countries might, and undoubtedly

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as follows: Norris, an inhabitant of St. John's, in the Province of New Brunswick, Kingdom of Great Britain, was master of a vessel belonging to the port of St. John's; he arrived with nineteen alien passengers at the port of Boston. Prior to landing, he was compelled to pay, under a law of Massachusetts, to the City of Boston two dollars for each passenger.

The statute of Massachusetts authorized the municipal authorities to appoint examiners, whose duty it was to examine the condition of all passengers on board of any vessel arriving in port. If, upon such examination, there were found among said passengers "any lunatic, idiot, maimed, aged or infirm person," incompetent, in the opinion of the examining officer, to maintain himself, or who had been a pauper in another country, the passenger was not permitted to land until the master, owner, consignee, or agent of the vessel gave to the city a bond in the sum of one thousand dollars, with sufficient sureties, that such lunatic, or indigent passenger, would not become a city, town, or State charge within ten years from the date of the bond, and for all alien passengers, other than those already specified, the master was required to pay two dollars for each passenger before they could land. Appropriate penalties were contained in the statute to secure compliance with its terms. Norris paid the two dollars for each passenger, as prescribed by the statute, under protest, landed his passengers, and thereupon instituted suit for the recovery of the money he had thus been compelled to pay. In the State Courts judgment passed in favor of the defendant, when the case was taken to the Supreme Court of the United States upon a writ of error, where the judgment was reversed; that Court holding the statute of Massachusetts, under which payment of the money was compelled, was unconstitutional and void.

In the opinions of the Justices in these celebrated cases, language is also used as in the case in 11th Peters, expressive of the right of the State in exercise of its police power, to exclude persons from her limits, but from the statement of the cases it is obvious that no such question was before the Court.—*See note at end of this Opinion.*

would, follow from any attempt at its exercise. Its maintenance would enable any State to involve the nation in war, however disposed to peace the people at large might be.

Where the evil apprehended by the State from the ingress of foreigners is that such foreigners will disregard the laws of the State, and thus be injurious to its peace, the remedy lies in the more vigorous enforcement of the laws, not in the exclusion of the parties. Gambling is considered by most States to be injurious to the morals of their people, and is made a public offense. It would hardly be considered as a legitimate exercise of the police power of the States to prevent a foreigner who had been a gambler in his own country from landing in ours. If, after landing, he pursues his former occupation, fine him; and, if he persists in it, imprison him, and the evil will be remedied. In some States the manufacture and sale of spirituous and intoxicating liquors are forbidden and punished as a misdemeanor. If the foreigner coming to our shores is a manufacturer or dealer in such liquors, it would be deemed an illegitimate exercise of the police power to exclude him, on account of his calling, from the State. The remedy against any apprehended manufacture and sale would lie in such case in the enforcement of the penal laws of the State. So if lewd women, or lewd men, even if the latter be of that baser sort, who, when Paul preached at Thessalonica, set all the city in an uproar, (Acts xvii, verse 5,) land on our shores, the remedy against any subsequent lewd conduct on their part must be found in good laws, or good municipal regulations and a vigorous police.

It is evident that if the possible violation of the laws of

the State by an emigrant, or the supposed immorality of his past life or profession, where that immorality has not already resulted in a conviction for a felony, is to determine his right to land and to reside in the State, or to pass through into other and interior States, a door will be opened to all sorts of oppression. The doctrine now asserted by counsel for the Commissioner of Immigration, if maintained, would certainly be invoked, and at no distant day, when other parties, besides low and despised Chinese women, are the subjects of its application, and would then be seen to be a grievous departure from principle.

I am aware of the very general feeling prevailing in this State against the Chinese, and in opposition to the extension of any encouragement to their immigration hither. It is felt that the dissimilarity in physical characteristics, in language, in manners, religion and habits, will always prevent any possible assimilation of them with our people. Admitting that there is ground for this feeling, it does not justify any legislation for their exclusion, which might not be adopted against the inhabitants of the most favored nations of the Caucasian race, and of Christian faith. If their further immigration is to be stopped, recourse must be had to the Federal Government, where the whole power over this subject lies. The State cannot exclude them arbitrarily, nor accomplish the same end by attributing to them a possible violation of its municipal laws. It is certainly desirable that all lewdness, especially when it takes the form of prostitution, should be suppressed, and that the most stringent measures to accomplish that end should be adopted. But I have little respect for that discriminating virtue which

is shocked when a frail child of China is landed on our shores, and yet allows the bedizened and painted harlot of other countries to parade our streets and open her hells in broad day, without molestation and without censure.

By the 5th Article of the Treaty between the United States and China, adopted on the 28th of July, 1868, the United States and the Emperor of China recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from one country to another, for purposes of curiosity, of trade, or as permanent residents. The 6th Article declares that citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities or exemptions in respect to travel or residence as may there be enjoyed by citizens or subjects of the most favored nation. And, reciprocally, that Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to travel or residence as may there be enjoyed by citizens or subjects of the most favored nation.

The only limitation upon the free ingress into the United States and egress from them of subjects of China is the limitation which is applied to citizens or subjects of the most favored nation; and as the General Government has not seen fit to attach any limitation to the ingress of subjects of those nations, none can be applied to the subjects of China. And the power of exclusion by the State, as we have already said, extends only to convicts, lepers, and persons incurably diseased, and to paupers and persons who, from physical causes, are likely to become a public charge.

The detention of the petitioner is therefore unlawful under the treaty.

But there is another view of this case equally conclusive for the discharge of the petitioner, which is founded upon the legislation of Congress since the adoption of the Fourteenth Amendment. That amendment, in its first section, designates who are citizens of the United States, and then declares that no State shall make or enforce any law which abridges their privileges and immunities. It also enacts that no State shall deprive *any person* (dropping the distinctive designation of citizens) of life, liberty or property, without due process of law; nor deny to *any person* the equal protection of the laws. The great fundamental rights of all citizens are thus secured against any State deprivation, and all persons, whether native or foreign, high or low, are, whilst within the jurisdiction of the United States, entitled to the equal protection of the laws. Discriminating and partial legislation, favoring particular persons, or against particular persons of the same class is now prohibited. Equality of privilege is the constitutional right of all citizens, and equality of protection is the constitutional right of all persons. *And equality of protection implies not only equal accessibility to the courts for the prevention or redress of wrongs, and the enforcement of rights, but equal exemption with others of the same class, from all charges and burdens of every kind.* Within these limits the power of the State exists, as it did previously to the adoption of the amendment, over all matters of internal police. And within these limits the act of Congress of May 31, 1870, restricts the action of the State with respect to foreigners immigrating to our country. "No tax or charge," says the act, "shall be imposed or en-

forced by any State upon any person immigrating thereto from a foreign country which is not equally imposed or enforced upon every person immigrating to such State from any other foreign country, and any law of any State in conflict with this provision is hereby declared null and void." (16 Statutes at Large, 144.)

By the term *charge*, as here used, is meant any onerous condition, it being the evident intention of the act to prevent any such condition from being imposed upon any person immigrating to the country, which is not equally imposed upon all other immigrants, at least upon all others of the same class. It was passed under and accords with the spirit of the fourteenth amendment. A condition which makes the right of the immigrant to land depend upon the execution of a bond by a third party, not under his control, and whom he cannot constrain by any legal proceedings, and whose execution of the bond can only be obtained upon such terms as he may exact, is as onerous as any charge which can well be imposed, and must, if valid, generally lead, as in the present case, to the exclusion of the immigrant.

The statute of California which we have been considering imposes this onerous condition upon persons of particular classes on their arrival in the ports of the State by vessel, but leaves all other foreigners of the same classes entering the State in any other way, by land from the British possessions or Mexico, or over the plains by railway, exempt from any charge. The statute is therefore in direct conflict with the act of Congress.

It follows, from views thus expressed, that the petitioner must be discharged from further restraint of her liberty; and it is so ordered.

NOTE.

Mr. Justice Wayne, one of the Judges composing the majority of the Court which decided the Passenger cases, sums up the conclusions of the Court as follows, (7 How., 412:)

1. That the acts of New York and Massachusetts imposing a tax upon passengers, either foreigners or citizens, coming into the ports in those States, either in foreign vessels or vessels of the United States, from foreign nations or from ports in the United States, are unconstitutional and void, being in their nature regulations of commerce contrary to the grant in the Constitution to Congress of the power to regulate commerce with foreign nations and among the several States.

2. That the States of this Union cannot constitutionally tax the commerce of the United States for the purpose of paying any expense incident to the execution of their police laws; and that the commerce of the United States includes an intercourse of persons as well as the importation of merchandise.

3. That the acts of Massachusetts and New York in question in these cases conflict with treaty stipulations existing between the United States and Great Britain, permitting the inhabitants of the two countries "freely and securely to come, with their ships and cargoes, to all places, ports and rivers in the territories of each country to which other foreigners are permitted to come, to enter into the same, and to remain and reside in any parts of said territories, respectively; also, to hire and occupy houses and warehouses for the purpose of their commerce, and generally the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce, but subject, always, to the laws and statutes of the two countries, respectively;" and that said laws are therefore unconstitutional and void.

4. That, the Congress of the United States having by sundry acts passed at different times admitted foreigners into the United States with their personal luggage and tools of trade free from all duty or imposts, the acts of Massachusetts and New York imposing any tax upon foreigners or immigrants for any purpose whatever, whilst the vessel is *in transitu* to her port of destination, though said vessel may have arrived within the jurisdictional limits of either of the States of Massachusetts or New York, and before the passengers have been landed, are in violation of said acts of Congress, and therefore unconstitutional and void.

5. That the acts of Massachusetts and New York, so far as they impose any obligation upon the owners or consignees of vessels, or upon the captains of vessels or freighters of the same arriving in the ports of the United States, within the said States, to pay any tax or duty of any kind whatever, or to be in any way responsible for the same, for passengers arriving in the United States, or coming from a port in the United States, are unconstitutional and void, being contrary to the constitutional grant to Congress of the power to regulate commerce with foreign nations and among the several States, and to the legislation of Congress under the said power, by which the United States have been laid off into collection districts and ports of entry established within the same, and commercial regulations prescribed, under which vessels, their cargoes and passengers, are to be admitted into

the ports of the United States, as well from abroad as from other ports of the United States. That the act of New York now in question, so far as it imposes a tax upon passengers arriving in vessels from other ports in the United States, is properly in this case before this Court for construction, and that the said tax is unconstitutional and void. That the ninth section of the first article of the Constitution includes within it the migration of other persons, as well as the importation of slaves, and in terms recognizes that other persons as well as slaves may be the subjects of importation and commerce.

6. That the fifth clause of the ninth section of the first article of the Constitution, which declares that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another State; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another," is a limitation upon the power of Congress to regulate commerce for the purpose of producing entire commercial equality within the United States, and also a prohibition upon the States to destroy such equality by any legislation prescribing a condition upon which vessels bound from one State shall enter the ports of another State.

7. That the acts of Massachusetts and New York, so far as they impose a tax upon passengers, are unconstitutional and void, because each of them so far conflicts with the first clause of the eighth section of the first article of the Constitution, which enjoins that all duties, imposts, and excises shall be uniform throughout the United States; because the constitutional uniformity enjoined in respect to duties and imposts is as real and obligatory upon the States, in the absence of all legislation by Congress, as if the uniformity had been made by the legislation of Congress, and that such constitutional uniformity is interfered with and destroyed by any State imposing any tax upon the intercourse of persons from State to State, or from foreign countries to the United States.

8. That the power in Congress to regulate commerce with foreign nations and among the several States includes navigation upon the high seas, and in the bays, harbors, lakes and navigable waters within the United States, and that any tax by a State in any way affecting the right of navigation, or subjecting the exercise of the right to a condition, is contrary to the aforesaid grant.

9. That the States of this Union may, in the exercise of their police powers, pass quarantine and health laws, interdicting vessels coming from foreign ports, or ports within the United States, from landing passengers and goods, prescribe the places and time for vessels to quarantine, and impose penalties upon persons for violating the same; and that such laws, though affecting commerce in its transit, are not regulations of commerce prescribing terms upon which merchandise and persons shall be admitted into the ports of the United States, but precautionary regulations to prevent vessels engaged in commerce from introducing disease into the ports to which they are bound, and that the States may, in the exercise of such police power, without any violation of the power in Congress to regulate commerce, exact from the owner or consignee of a quarantined vessel, and from the passengers on board of her, such fees as will pay to the State the cost of their detention and of the purification of the vessel, cargo, and apparel of the persons on board.

Supreme Court of the United States.

No. 478.

CHY LUNG, PLAINTIFF IN ERROR,

vs.

J. H. FREEMAN, R. K. PIOTROWSKI, Commissioner of Immigration, and WILLIAM McKIBBEN, Sheriff of the city and county of San Francisco, Cal.

BRIEF
FOR PLAINTIFF IN ERROR.

EDWARDS PIERREPONT,
Of Counsel for Plaintiff.

Judd & Detweiler, Prs., Washington, D. C.

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BRIEF

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Of Counsel for Plaintiff.

STATEMENT.

This cause comes up on writ of error from the supreme court of California. The error alleged is in the court below deciding that the statute under which the plaintiff is imprisoned is valid, and her detention lawful.

The California Statute, section 2,952, Amended Code, requires the Commissioner of Immigration "to satisfy himself whether or not any passenger who shall arrive in this State by vessels from any foreign port or place (who is not a citizen of the United States,) is lunatic, idiotic, deaf, dumb, blind, crippled or infirm, and is not accompanied by rela-

tives who are able and willing to support him, or is likely to become permanently a public charge, or has been a pauper in any other country, or is, from sickness or disease, existing either at the time of sailing from the port of departure, or at the time of his arrival in this State, a public charge, or likely to become so, or is a convicted criminal, or a lewd or debauched woman;" and then declares that "no person who shall belong to either class, or who possesses any of the infirmities or vices specified herein, shall be permitted to land in this State, unless the master, owner or consignee of said vessel shall give a joint and several bond to the people of the State of California, in the penal sum of five hundred dollars, in gold coin of the United States, conditioned to indemnify and save harmless every county, city and county, town and city of this State, against all costs and expenses which may be by them necessarily incurred for the relief, support, medical care, or any expense whatever, resulting from the infirmities or vices herein referred to, of the persons named in said bonds, within two years from the date of said bonds; - - - and if the master, owner or consignee of said vessel shall fail or refuse to execute the bond herein required to be executed, they are required to retain such persons on board of said vessel until said vessel shall leave the port, and then convey said passengers from this State; and if said master, owner or consignee shall fail or refuse to perform the duty and service last herein enjoined, or shall permit said passengers to escape from said vessel and land in this State, they shall forfeit to the State the sum of five hundred dollars, in gold coin of the United States, for each passenger so escaped, to be recovered by suit at law."

About the 24th of August, 1874, the steamer *Japan*, one of the ships of the Pacific Mail line, arrived from Hong Kong at the port of San Francisco with 22 Chinese passenger women on board, of which number the plaintiff was one. The commissioner immediately served the following notice:

To the Commander of the Steamer Japan from Hong-Kong:

SIR: You are hereby notified that there are on board the ship commanded by you the following-named passengers from ports out of the United States who belong to the class or possess the infirmatives or vices specified in sec. 2959 of the political code, viz:

(Names appended hereto.)

And that you, (or the owners or consignees of your vessel,) are required to either give the bond required by said section 2952 of the political code, for each of such passengers, or to retain them on board of your vessel until said vessel shall leave this port, and then convey said passengers from this State.

(Signed) R. KORWIN PIOTROWSKI,
Com'r of Immigration.

These passengers were brought before the court upon *habeas corpus*, and after hearing, the following order was made:

Ex parte Ah Fook and twenty-two Chinese Women, on habeas corpus.

It is hereby ordered and adjudged that the coroner of the city and county of San Francisco *reward* and deliver to J. H. Freeman, the master of the steamship Japan, on board of said steamship, in the port of San Francisco, or to the owners of said steamship, the Pacific Mail Steamship Company, on board of said steamship, in the port of San Francisco, or to the consignees of said steamship at the port of San Francisco, and on board of said steamship, the persons named in said writ, to wit, twenty-two Chinese women in your possession, namely: * * * * And that the said

master and owners and consignees are hereby required to retain such persons on board of said vessel, namely, the said steamship Japan, until the said vessel shall leave this port, and then convey said persons and passengers, and each of them, from and out of this State. And in case said steamship Japan be not now in the port of San Francisco, then it is hereby ordered that said coroner retain the said above-named persons and passengers in his possession until the said steamship arrives, (at which time said coroner is hereby ordered to carry out and enforce this order,) or until the further order of the court.

WALLACE, *C. J.*
MCKINSTRY, *J.*
CROCKETT, *J.*

Most of these women were afterwards discharged by Mr. J ustice Field, but the plaintiff in error was held, as I under stand, for the purpose of testing the California statute before this Court.

FIRST.

The courts of the United States have jurisdiction in this case. The plaintiff is an alien, the subject of a foreign government, having treaty relations with the Government of the United States, and she has a right to invoke the aid of the Federal tribunals whenever her privileges, guaranteed by treaty, or the Constitution, or the laws ot Congress, are invaded.

SECOND.

The statute above cited is void. Under its provisions the Commissioners of Immigration of California are bound to prevent the landing of any passenger who shall arrive in the State by *vessel* from any port in Great Britain, Ger-

many, France, or China, (if such passenger is not a citizen of the United States,) though the person be ever so rich or exalted in character, rank, or station, and though accompanied by a retinue of servants; if he happens to be "infirm" in health, or "crippled" in his limbs, or "deaf" in his hearing, when he arrives, unless "accompanied by RELATIVES who are able and willing to support him," or if at any time he "has been a pauper," no matter how many millions the once pauper may possess at the time of arrival in port, or if the passenger "is a convicted criminal," though his crime may have been the political offense of trying to aid his countrymen in establishing a constitutional government; or if the passenger is a woman and is "lewd," although she may never have known sexual intercourse, or if she is "*debauched*," either by drunkenness or gluttony, or political intrigues, or in any other way, UNLESS the prescribed bonds are given.

An English nobleman of great riches and renown, but "crippled" in the Crimean war, accompanied by a Prussian prince, "infirm" from wounds received at the battle of Sadowa, arrives at San Francisco in the steamer *Japan;* under this statute they cannot be permitted to land. In their suite is an English diplomat and his wife, together with a French actor and his wife. The Commissioner of Immigration is "satisfied" that one of the women is lewd, that the other is debauched, and he takes the precise course with them that he took with the plaintiff in error in this case. It can hardly be doubted that the English woman and the French woman would be released from imprisonment. But under our Constitution, our laws, and our treaty with China, the plaintiff has precisely the same rights

as an English, French, or German woman enjoys on a visit to California.

It will hardly be claimed that the statute of California which prevents a French gentleman, a German prince and an English noble from landing at San Francisco on their voyage around the world, because one is "crippled," one "infirm," and one "deaf," can be adjudged valid. But it is claimed that the part of the statute aimed at "lewd" women and "debauched" women is within the power of the State to enforce.

Words used in statutes are generally supposed to convey their ordinary meaning. Whatever criticisms may be made upon Webster, his dictionary in definitions is conceded to surpass every other. He defines "*lewd*" thus:

1. Not clerical; pertaining to or characterizing the laity; laic, laical, hence unlearned; ignorant; foolish; simple. [Obs.]

> "Yea, blessed be alway a *lewed* man
> That naught but only his beleve can."—*Chaucer.*

"The almightiness of God standeth not in that he is able to do all that our foolish, *lewd* thoughts may imagine."—*Tyndale.*

2. Contemptible; vile; despicable; profligate; dissolute. [Rare.]

"But the Jews, who believed not . . . took unto them certain *lewd* fellows of the baser sort . . . and assaulted the house of Jason."—*Acts* xvii, 5.

"Great numbers of men were trained up in an idle and dissolute way of life . . . and then, if not ashamed to beg, too *lewd* to work, and ready for any kind of mischief."—*Southey.*

3. Given to the unlawful indulgence of lust; dissolute; lustful; filthy.

4. Proceeding from unlawful lust; as lewd actions.

Hence, under this statute, a German, French, English or Irish girl coming "by vessel" to California can be excluded from landing, though chaste as the Virgin and devout as St. Ursula, if [illegible].

There is no evidence in the record that the plaintiff was ever "*lewd*" or ever "*debauched*," unless it is *lewd* to be *unlearned* or of the humbler class.

THIRD.

To the General Government many exclusive powers are granted, and any acts of the several States in contravention of such authority are void.

Among those exclusive powers confided to the Federal Government are the following:

The power to regulate commerce with foreign nations.

The power to regulate the intercourse of foreign people with our own.

The power to prescribe the conditions of migration or importation of persons, and the laws of naturalization.

The power to declare war.

The power to make treaties with othe

Constitution, Art. 1, Secs. 8, 9, an

The Passenger Cases, 7 Howard,

Crandall v. State of Nevada

The State of Cal. vs Conner

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There is no evidence in the record that the plaintiff was ever "*lewd*" or ever "*debauched*," unless it is *lewd* to be *unlearned* or of the humbler class.

THIRD.

To the General Government many exclusive powers are granted, and any acts of the several States in contravention of such authority are void.

Among those exclusive powers confided to the Federal Government are the following:

The power to regulate commerce with foreign nations.

The power to regulate the intercourse of foreign people with our own.

The power to prescribe the conditions of migration or importation of persons, and the laws of naturalization.

The power to declare war.

The power to make treaties with other nations.

Constitution, Art. 1, Secs. 8, 9, and 10.

The Passenger Cases, 7 Howard, 462, 412. 6 Wal. 35
Crandall v. State of Nevada,
The State of Cal. vs Constitution 42 Cal. 586.

Under our treaty with Great Britain her subjects may come "freely and securely" to our ports for curiosity or

business, and enjoy complete protection under the laws, and no one is excluded because a commissioner of immigration is "satisfied" that he or she is "*lewd.*" A subject of China has the same right.

"By the 5th Article of the Treaty between the United States and China, adopted on the 28th of July, 1868, the United States and the Emperor of China recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to another, for purposes of curiosity, of trade, or as permanent residents. The 6th Article declares that citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities or exemptions in respect to travel or residence as may there be enjoyed by citizens or subjects of the most favored nation. And, reciprocally, that Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to travel or residence as may there be enjoyed by citizens or subjects of the most favored nation."

FOURTH.

But the right to exclude the Chinese women from landing at ports of the United States in California is claimed under what is called the "*Police power of the State.*"

The *ballet* and other theatrical exhibitions are prohibited in several of the States; but if a French ballet-dancer or French actress should desire to visit all those States she could not be prevented from landing at the ports by any State statute, on the ground that the law was made under the "police power of the State." Such law would be inconsistent with our treaty with France; contrary to the well-established principles of commercial intercourse, and void. If the dancer or the actress violated the laws of the

State after landing, the State could prosecute the offender. Under our treaty the same rule applies to a Chinese woman as to a French one, and renders the detention of the plaintiff in prison clearly unlawful.

There was a time in our history when eminent judges of this Court asserted the right of a State to exclude from its limits any person whom it might deem injurious to the interests of its people, and Chief Justice Taney, in his dissenting opinion in the "Passenger Cases," maintained this right. (7 Howard, 465.) But that was during the reign of Slavery, when the doctrine of State rights was pushed to its mad extreme in order to exclude free negroes and believers in freedom from the Slave States. Those days of frantic efforts to establish wrongs have passed away, and no Federal court would now tolerate such views.

The "police power of a State" is limited; it may be invoked by a State in self-defense and for the preservation of its citizens, but the power must be confined within reasonable limits—it is not to be exercised whimsically, without reason, and contrary to the well-established principles which govern the intercourse of nations, and it cannot be invoked to contravene the lawful authority of the Federal Government.

If California becomes a Mormon State, and her Legislature fancies that the safety and welfare of the community demands that all whom they call "Gentiles" should be excluded from her ports, laws to accomplish that end would be void, and the sincerity of the conviction that the safety of the State demanded such exclusion would not help the laws.

Under the "Police Power" very many things may be

done for the safety of the State; but laws, the result of caprice, bigotry or unreasonable apprehension, and which tend to endanger the peace of the nation with foreign powers touch the domain of Federal authority, and come under the supervision of the Federal courts. A single State of this Union is not the sole judge of what laws may be passed for its own security, if the execution of those laws effect our treaty relations. The right of self-defense is conceded to every State, but, as Mr. Justice Grier says, in the *Passenger Cases:*

"The powers used for self-defense and protection against harm cannot be perverted into weapons of offense and aggression upon the rights of others."
7 Howard, 463, 464.

Every *individual* has the right of self-defense; in the exercise of that right he may do great bodily harm to his enemy, or even kill him, but he is not the sole judge of what he may do for his own safety. His acts must be *reasonable*, under the circumstances, and not prompted alone by cowardly fears or groundless suspicions.

FIFTH.

In the 14th amendment of the Constitution is the following:

SEC. 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction *the equal protection of the laws.*

Under this amendment *every person*, whether native or *foreign*, is entitled to *equal protection* of our laws. Persons or classes who are not equally exempt from *burdens*, have not "*the equal protection of the laws.*"

Quite in harmony with this amendment is the act of Congress passed May 31, 1870. "No tax or charge," says the act, "shall be imposed or enforced by any State upon any person immigrating thereto from a foreign country which is not equally imposed or enforced upon every person immigrating to such State from any other foreign country, and any law of any State in conflict with this provision is hereby declared null and void."

16 Statutes at Large, 144.

The "CHARGE" imposed by the statute on a Chinese woman arriving in a vessel from Hong-Kong amounts to exclusion of the immigrant or visitor; while a Mexican woman of the same class arriving by rail, stage-coach, or carriage from Mexico, is exempt from *any charge;* and thus a distinction is made by the California statute in conflict with the laws of Congress.

The very elaborate opinion of Mr. Justice Field, delivered when the other Chinese women were discharged, is so far superior to anything which I can add, that I close my argument by handing printed copies of the opinion to the Court.

EDWARDS PIERREPONT,
Of Counsel for the Plaintiff in Error.